Campbell Carden

LAW AND CONTEMPORARY PROBLEMS

VOLUME III | APRIL, 1936 | NUMBER 2

FOREWORD

This symposium constitutes the second of two issues of this periodical devoted to a consideration of the legal and administrative problems posed by the Social Security Act. The preceding issue was directed exclusively to the subject of unemployment compensation;[1] the present issue deals with the provisions for old-age security and public welfare embodied in the other titles of the Federal Act.

In those provisions which erect the framework of the federal-state system of unemployment compensation, the Social Security Act seeks to cope with a problem which is peculiarly the product of contemporary industrialism. This endeavor compels the creation of intricate legal and administrative devices, all without precedent in this country, many without precedent elsewhere. In contrast, the other titles of the Act deal with an ancient problem which has long been the concern of the state, the incidence of poverty upon old age and childhood and upon the sick and disabled. Modern economic maladjustments have intensified this problem and have often defeated the efforts of the local unit of government to deal with it adequately. Except in its old-age insurance provisions, what the Social Security Act has done is to bring to bear the federal government's superior resources in wealth and in trained personnel to the aid of those state and local governments which adopt suitable measures for the assistance of these dependent classes. The measures themselves, however, are not new, and hence no effort has been made to scrutinize them in that detail with which state unemployment compensation laws were examined in the preceding issue. Instead, in the articles herein discussing old-age assistance, aid for dependent children, maternal and child welfare services, public health work, and pensions to the blind, emphasis has been placed on the conditions leading to the provision of federal aid, the basis on which it is to be extended, and the possible effects of the Federal Act on state and local programs. Two significant problems, common to all these measures, the problem of administrative organization and the problem of financing the requisite state and local expenditures, are dealt with in separate articles.

The provisions of the Social Security Act providing for old-age insurance are noted above as exceptional in character. These provisions represent an experiment in government which is as far-reaching in effect and, for this country at least, as novel in character as that embodied in the unemployment compensation system. Although

[1] The table of contents of that issue is set forth in the advertisement facing the last page of this issue.

less complex in structure than the latter, the Federal Old-Age Insurance System presents problems of the first magnitude, and the first six articles in this symposium are devoted to their consideration.

The soundness and adequacy of these measures, however important and provocative a subject for discussion, are matters that can only be tested in experience. But that experience cannot be gained without the sanction of the Supreme Court. Whether the Justices of that tribunal will find the several titles of the Social Security Act within the powers granted to Congress by the Constitution and not in conflict with the inhibitions it imposes is a question which has led to sharp division of opinion among those expert in constitutional divination. The concluding articles of the symposium present the cases for and against the constitutionality of the Federal Act.

D. F. C.

J. Prentice Murphy, Executive Secretary of the Children's Bureau of Philadelphia and President-Elect of the National Conference of Social Work, had consented to prepare an article for this symposium when he was stricken by an illness which caused his death on February 2, 1936. Edgar Sydenstricker, Director of Scientific Research of the Milbank Memorial Fund, shortly after having completed his valuable article, "Public Health Provisions of the Social Security Act," died on March 19, 1936. The death of these leaders in the cause of public welfare deprives the nation of distinguished talents at a time when services such as theirs are sorely needed.

OLD-AGE SECURITY ABROAD: THE BACKGROUND OF TITLES II AND VIII OF THE SOCIAL SECURITY ACT

Barbara Nachtrieb Armstrong*

More than a hundred years ago Great Britain recognized in specific legislation that provision for old age through individual saving presented difficulties. In a statute enacted in 1833,[1] the British Parliament initiated a policy of offering old-age annuities through the National Debt Commissioner to persons who desired to make systematic preparation for income during their retirement period. Belgium, France and Italy[2] enacted similar laws in the fifties. These measures had little practical result as the opportunities for purchase of old-age annuities secured by the public credit were not taken advantage of by appreciable numbers.

More effective, of course, were the compulsory annuity arrangements set up in the latter half of the nineteenth century by various European countries[3] for workers in selected industries, such as mining, navigation and later, railroading. In the case of mining, these schemes were but public organization on a compulsory basis of provident funds which provided accident and sickness insurance as well as old age protection. These funds dated back to the early middle ages and had always been, by virtue of custom more effective than any formal law, a required part of organized community life in mining villages.[4]

In point of time of origin the French Seamen's Invalidity and Old Age Insurance Fund commands special attention. It was established in 1673[5] and, barring occasional interruptions during periods of violent political change, continuously functioned thereafter. It was moreover not only the first compulsory insurance institution created by national law to provide old-age security but also in all probability the first

* A.B. 1913; J.D. 1915; Ph.D. 1921, University of California. Professor of Law, University of California. Consultant (on Unemployment and Old-Age Insurance) to Committee on Economic Security, 1934; Executive Secretary, California Social Insurance Commission, 1915-1919; Member of Faculty of Economics and Law Departments, University of California, 1919 to 1926; Member of Law Department since 1926. Author of *Insuring the Essentials* (Macmillan Company, 1932). Contributor to legal periodicals, *Encyclopedia of Social Sciences, Survey, Political Science Annals, National Municipal Review,* etc.

[1] 3 & 4 Wm. IV, c. 14 (1833).

[2] For a discussion of these measures, see U. S. Comm'r of Labor, 24th Ann. Rep. (1909) 83, 503, 863.

[3] *Id.* 413, 524, 532, 881, 889, 1396-99, 2001-2004.

[4] See U. S. Comm'r of Labor, 4th Spec. Rep. (1893).

[5] For the text of this act as originally enacted, see 19 Isambert, Recueil des Anciennes Lois Francaises (1822-33) 118.

instance of any branch of social insurance being put on a statutory compulsory basis. Widespread legislative interest, however, in systematic provision of annuities even for special groups of workers dates well along in the late nineteenth century.

The first compulsory annuity scheme applying to industrial workers was set up in 1889[6] by the usual pioneering social insurance country—Germany. As in the case of the earlier sickness and industrial accident insurance provision, the main features of the German system were patterned after those of the ancient mining funds. Annuities were payable in the case of either invalidity or old age. The former was defined as loss of more than two-thirds earning capacity and the latter as arrival at the age of seventy.[7] The insured workers and the employers were required to share the premiums needed for financing the benefits. Premiums varied with the wage level of the worker and annuities were adjusted both to the size and number of premiums paid. In addition, the government bore part of the financial burden of the scheme by granting an annual supplement to each annuity paid.[8]

This German program rested on the simple assumption that, since most workers did not, or could not, accumulate surplus enough to maintain them in their old age, the building of an annuity fund by systematic contributions from wage earners and their employers should be required. Thus not only would the individual worker be assured a "backlog" of income towards the end of his life but also the community would be protected from a serious old-age dependency problem.

Shortly after the establishing of this compulsory annuity program by Germany, other countries attacked the problem of old-age security in two other ways. One, like the German, was a "contributory annuity" program to provide pensions payable as a right and not conditioned on need. It involved, however, the *inducing* rather than the *compelling* of contributions. Belgium (1891), France (1895), Italy (1898), Spain (1908) experimented with plans[9] involving public subsidies to individual annuities voluntarily purchased from the government. The subsidies offered in the Belgian and Italian schemes constituted one-half or more of the total cost of the annuities provided, while those of France and Spain were markedly smaller and the effectiveness of the subsidies in inducing purchase of annuities varied, of course, directly with their size.[10] Aside from the inevitable objection to their cost, the chief adverse criticism directed at these "subsidy" schemes was that small landowners and the lower bourgeoisie constituted the bulk of the annuitants, whereas the industrial workers who were most apt to arrive at old age penniless were not reached in substantial numbers.

[6] For a full description of the original act, see U. S. COMM'R OF LABOR, 24TH ANN. REP. 1356-1404. For a complete translation of the 1911 Revised Social Insurance Code, see U. S. BUR. OF LABOR STAT. BULL. 96 (1911) (Employes' Insurance); *cf.* BULL. 107 (1912). Insurance of manuals and non-manuals was provided in two separate systems.

[7] U. S. BUR. OF LABOR STAT. BULL. 96 (1911) Articles 1255-1257.

[8] *Id.*, Articles 1387-1391.

[9] U. S. COMM'R OF LABOR, 24TH ANN. REP. 503-504, 510-511, 836-837, 858-861, 1875-1885, 2362, 2372.

[10] *Id.*, pp. 505, 861, 870-871, 1894; also ANNUARIO STATISTICO ITALIENO ANN. 1915, pp. 27, 279.

Much more significant in growth than the voluntary subsidized technique, was the other type of old-age provision, involving gratuitous pensions. This became for twenty years or so a serious competitor to the German compulsory contributory annuity plan. Denmark was the pioneer in this instance, establishing in 1891[11] a system of government money grants for meritorious citizens who arrived at old age without a competence. These grants or "pensions" were completely differentiated from poor relief and were intended to carry no stigma.[12] The philosophy underlying this type of provision was in marked contrast with the pragmatic assumptions on which was rested the contributory insurance scheme adopted by Germany. The latter merely accepted, without moralizing, the fact of wide prevalence of old-age dependency, the practical impossibility of relying upon individual effort for the control of such dependency and the effectiveness of a socially-controlled compulsory contributory annuity plan as a method of attack upon the problem.

The Danish pension scheme, on the other hand, was based upon the conviction that those who had been good citizens and independent self-respecting workers had made a valuable contribution to their community and were entitled in return to help from the public funds, if they could not maintain themselves in old age. In short, the Danish program was directed at the "worthy" aged who were in distress, with perhaps the belief that the incentive of old-age security would induce the citizenry to eschew undeserving ways of living. The grant or pension was adjusted to the need of the pensioner, the government offer being in the nature of surety to guarantee the deserving aged citizen's income should his own means fail.[13] The so-called "moral" qualifications were numerous and severe and reflected the conviction of the period that only the undeserving and undesirables had to seek public aid during their vigorous working years. The applicant had to prove not only that he had neither been convicted of crime (unless pardoned), nor been guilty of "vagrancy, mendicancy or living in such a way as to offend public morality" but also that he had not within ten years received poor relief assistance.[14]

The communal authorities were allowed to determine the amount of the pension in each case and were reimbursed by the Danish Exchequer to the extent of one-half of their expenditures for old-age support.[15] Dependency upon children was not forced, although actual provision willingly made for parents was treated as income in judging the applicant's need.[16]

Denmark's first disciple was a British colony in the antipodes, New Zealand. The basic principles of the Danish plan were accepted in the New Zealand scheme

[11] U. S. COMM'R OF LABOR, 24TH ANN. REP., 624.

[12] *Id.*, 623, 633. The title of the act read "Law of April 1891 concerning old age support for the worthy poor, aside from poor relief." Civil rights were lost with the acceptance of poor relief but not, however, for drawing of pensions. Different offices administered the two kinds of assistance. For a digest of the act, see ANNUAIRE DE LEGISLATION ETRANGERE (1891) 787-788.

[13] U. S. COMM'R OF LABOR, 24TH ANN. REP. 626.

[14] *Id.* 625. [15] *Id.* 632. [16] *Id.* 628-629.

which was legislated in 1898.[17] Criminal offenders, family deserters and other persons of bad moral character were disqualified. The size of the pension, however, while adjusted to the applicant's need as in Denmark, was dictated by the terms of the statute in the New Zealand scheme rather than left to the discretion of the administrative authorities. Two Australian states enacted similar measures in 1901[18] which functioned until a federal pension act, effective in all the Australian states was passed by the Commonwealth of Australia in 1908.[19] France meanwhile had enacted a gratuitous pension measure in 1905.[20]

The acceptance of this type of old-age security, moreover, by Great Britain in her enactment of 1908[21] which provided non-contributory pensions for the "aged and deserving poor" added a nation of major industrial importance. This not only affected the choice of old-age security provision in Canada,[22] Newfoundland[23] and South Africa,[24] but also markedly influenced thought in this country with respect to old-age dependency problems.

Experience revealed certain significant weaknesses in this, the gratuitous pension, type of old-age security provision. First, and perhaps most important, by adjusting the pension to the needs of the pensioner, it put a premium not upon self-help but upon the opposite. The more the applicant had, the less he received from the government and *vice versa*. Thus the scheme was basically at war with the fundamental principle of contemporary life, which demands that each individual make every effort to accumulate for his own self-maintenance. Attempts were made to meet this difficulty by amendments which exempted certain amounts of savings or income in pension computations. Thus after less than a decade of experience the Danish Act was amended to permit income up to 100 kroner per year to be disregarded in judging the applicant's need for a pension.[25] This provision was periodically revised and liberalized. Similar "exemptions" of stipulated sums were included in other pension schemes and they too were liberalized by subsequent amendments, in an endeavor to meet the generally expressed objection that thriftlessness was promoted by the gratuitous pension plan.[26]

A second important limitation of the gratuitous pension plan revealed by experience, was the practical difficulty of enforcing its moral qualification clauses. Administrators sitting in judgment on the aged and dependent applicants found that the theory of aid only to the deserving and worthy, however justified on moral grounds, was a distasteful one to put into practice. Strong public sentiment developed against

[17] New Zealand Stat. 1898, No. 14.

[18] New South Wales and Victoria.

[19] Australia Stat. 1908, No. 17.

[20] This was frankly aid for the indigent (institutional and non-institutional), not "reward for the worthy." For a description of its terms, see U. S. COMM'R OF LABOR, 24TH ANN. REP. 919-923.

[21] 7 Ed. VII, c. 40 (1908).

[22] Canada Stat. 1927, c. 156.

[23] Newfoundland Stat. 1911, c. XXIX; CONS. STAT. (1916) c. 74.

[24] Union of South Africa Stat. 1928, No. 22.

[25] U. S. COMM'R OF LABOR, 24TH ANN. REP. 626.

[26] The increases were, of course, partly in deference to changes in purchasing power of money. See New Zealand Stat. 1913, No. 10, §5; 1924, No. 34, §4; Australia Stat. 1908, No. 17, §24; 1916, No. 32, §3 (a); Great Britain, 1 & 2 Geo. V, c. 16, §2 (c) (1911); 9 & 10 Geo. V, c. 102, §4 (1919); 14 & 15 Geo. V, c. 33, §1 (1924).

the penalizing of people at a time when they were old and helpless. This was reflected by the provisions of the later measures and amendments which repeatedly modified and softened the "moral qualifications" requirement.[27] In result the schemes began to lose their original complexion of special provision for the old age of meritorious citizens and to take on an aspect of systematic general provision for necessitous old persons. The burden to the public funds mounted steadily as the percentage of eligible population granted pensions increased year by year. These facts, together with the distaste which the self-respecting old person felt at having to prove need by submitting to an investigation which inevitably smacked of poor relief procedure, combined to develop a sentiment against this method of attacking the problem of old-age security.

The insurance or annuity technique offered several practical advantages as compared with the gratuitous pension plan. By requiring systematic contributions during working years, it eased the burden on the general tax receipts. By producing an annuity to which the insured worker was entitled as a right, it removed the pension from any possible connection with poor relief. Since the wage earners were required to participate in the scheme, whether they were deserving or undeserving could not be a proper subject of inquiry[28] in their period of old age. This made for a more inclusive and, since unworthy as well as worthy old people must be fed, clothed and housed, a more satisfactory remedial program.

In consequence an increasing number of countries adopted the contributory annuity plan. France,[29] Luxemburg,[30] Roumania,[31] the Netherlands[32] and Sweden[33] had enacted compulsory old-age insurance measures before the outbreak of the World War. Between 1918 and 1930 moreover, thirteen additional European[34] countries, Great Britain among them, had taken a similar step as had several of the Latin American countries. There was also a series of special enactments for selected industrial groups.[35] Practically all of the measures provided for invalidity as well as for old age. During this period only Canada,[36] South Africa,[37] Norway[38] and

[27] Compare Section 17 of Australia's act, *supra* note 19, with the "moral qualifications" clause in the New Zealand Act, *supra* note 17. The Newfoundland Act, *supra* note 23, had no "moral qualification" clauses. For Great Britain's gradual release of the "moral qualification" clauses, see 1 & 2 Geo. V, c. 16, §4 (1911); 9 & 10 Geo. V, c. 102, §3 (1919). Also compare Denmark's qualification clause in her 1927 Statute, INT. LABOR OFFICE LEGIS. SERIES 1927, Denmark 2, §2-13, with that included in her original act and discussed *supra*, p. 177.

[28] But see Danish 1933 Invalidity Insurance Law, *infra* note 40.

[29] For an analysis, see BULLETIN DU MINISTERE DU TRAVAIL 1910, p. 384; for translation, INT. LABOR OFFICE, 5 BULL. (1910) 361-375.

[30] INT. LABOR OFFICE, 6 BULL. (1911) cxxvi-cxxxvii.

[31] 8 *id.* (1913) xxx-xxxv.

[32] 9 *id.* (1914) cxx. Operation of this act was deferred until 1923. See INT. LABOR OFFICE, LEGIS. SERIES 1923, Netherlands 6.

[33] INT. LABOR OFFICE, 9 BULL. (1914) 191-203.

[34] Austria (1925), Belgium (1924), Bulgaria (1924), Czechoslovakia (1924), Great Britain (1925), Greece (1924), Hungary (1929), Italy (1919), Poland (1928); for commercial employees only, Portugal (1919), Spain (1919), Russia (1921), Yugoslavia (1922), Chile (1924), Argentina (1921) (operation suspended) (for citations to the foregoing laws and their chief amendments and description of their subject matter, see ARMSTRONG, INSURING THE ESSENTIALS (1932) App. Chart VIII).

[35] Bolivia (1926) (bank employees); Brazil (1921) (railroad workers); Cuba (1923) (railroad workers), (1927) (maritime workers).

[36] Canada Stat. 1927, c. 156.

[37] Union of South Africa Stat. 1928, No. 22.

[38] INT. LABOR OFFICE, LEGIS. SERIES 1923, No. 1.

Uruguay[39] had enacted gratuitous pension laws and that of Norway was and still is non-operative.

Since 1930, interest in compulsory annuity provision has continued to gain momentum and a change in opinion is evident in even the pioneer gratuitous pension countries. Denmark, while still granting non-contributory old-age pensions, since 1933 makes them available only to those who comply with the new rules compelling sickness and invalidity insurance.[40]

New Zealand in 1935 appointed a government departmental committee which has recently reported and recommended that New Zealand adopt a "National Compulsory Superannuation and Health Insurance" scheme.[41] The suggested plan follows the conventional pattern. Under its terms wage earners and salaried employees up to a certain income level would be required to insure and participation on a voluntary basis would be open to better-paid employees and to farmers, merchants and professional men.

All of the old-age insurance schemes of general application, except those of Sweden, Belgium and Chile, and, to a very limited extent, Great Britain,[42] confine their compulsory provisions to wage earners. This has been done for purely administrative reasons. Employers are used as collecting agencies for the government, through whom the insured workers are reached. The enforcement problems of the poll tax are involved in the attempt to compel contributions from self-employed persons whose need for old-age security is, of course, not to be differentiated from that of persons who are employed by others.

Sweden braved the administrative dangers of "popular" coverage and in her 1913 measure required the insurance of all persons between the ages of sixteen and sixty-five unless they were working in an occupation for which old-age pensions were already required. Contributions or premiums varied directly with income and were payable to the tax-collecting agencies. Municipalities were held responsible for unpaid contributions and delinquencies brought serious problems to local authorities. Experience indicated an average of fifteen percent of unpaid premiums which rose as high as forty to fifty percent in certain industrial districts. This has caused serious questioning in Sweden of the advisability of her coverage arrangements.[43]

[39] *Id.*, Uruguay 2.

[40] By a law enacted in 1933, only those who insure against sickness and invalidity (and all physically able to gain membership in sickness funds were required thereafter to insure) or are unable, for physical reasons, to qualify for such insurance, are eligible for old-age pensions. The full cost of old-age pensions is still met out of the public funds and the same moral and "needs" qualifications are retained. Furthermore, these same qualifying provisions now also apply to the contributory invalidity insurance pensions. For a full description of this hybrid scheme, see INT. LABOR OFFICE, 47 INDUSTRIAL AND LABOUR INFORMATION (1933) 278-9, 306-309.

[41] See 57 *id.*, (1936) 17-20, for a summary of the plan proposed.

[42] Great Britain's scheme, since 1928, has included certain manual workers who in legal theory are independent contractors, not employees. For purposes of insurance they are deemed employees of the persons for whom they perform personal services, *i.e.*, the customers, and the latter have the responsibility of employers. This inclusion covers such workers as timber fellers, hay cutters, hedgers, brick makers, etc., who contract for "jobs." See 18 & 19 Geo. V, c. 14, §201 (1928).

[43] See Liedstrand, *Social Insurance in Sweden* (1924) 9 INT. LABOR REV., 177, at 179 *et seq.*

Belgium and Chile, in addition to requiring their wage earners to insure, included self-employed workers whose earnings approximated that of industrial workers. To what extent this additional coverage has been effective is not of record.

Great Britain's extension of compulsory coverage to manual independent contractors handled administratively through the device of treating their customers as employers, was attempted only after more than twenty-five years of social insurance experience, when a substantial degree of conformity with insurance obligations was normal. Thus managed, the additional inclusion presents no greater enforcement difficulties than are involved in the insurance of domestic servants in private homes.

Survey of the twenty-odd contributory annuity plans[44] reveals considerable variation in detail but marked similarity in general pattern. Most systems limit the compulsion in the case at least of the non-manual workers, to persons earning less than a stipulated annual amount. This amount is set at a figure considered high enough to include all those persons who remain dependent upon their earnings throughout their lives. Almost without exception the insurance scheme is open on a voluntary basis to highly paid employees who are exempted from compulsory insurance and to independent workers, small merchants and other persons of moderate income. The majority now include both agricultural workers and domestics, although workers in these employments are still excepted in some countries which have recently set up their social insurance schemes. Special enforcement problems have caused a frequent deferring of the protection of farm labor and domestic service until the social insurance obligations have become normal accepted incidents of employment contracts.

In three-fourths of the schemes both employers and the insured workers[45] contribute regular shares of the premium due and the state exchequer shares in the financing in most instances, by adding a supplement to the pensions produced by the premiums. Sixty-five is the most usual age at which annuities become payable, sixty and seventy being the minimum and maximum age limits set in any of the plans.[46]

The amount of annuity is consistently small even in the light of the standard and cost of living of the country. The pension is obviously intended to furnish only a minimum subsistence, and some supplementary income is clearly contemplated as normal. The pension varies in almost all of the systems[47] with the wage level of the worker and with the length of his contribution period. A minimum amount, however, is usually included, which protects to a certain extent the man of very low earning capacity.

[44] For detailed information the reader is referred to Armstrong, Insuring the Essentials (1932) App. Chart VIII, where the coverage, financing, benefits, etc., of each act are set forth.

[45] The worker is not required to contribute in Spain, Holland and Russia. The employer contributes nothing in Sweden. The worker often does contribute both in Spain and Holland, and it is contemplated that he shall in order to get a substantial annuity as the amount otherwise is very small.

[46] Several of the schemes, however, set a lower age limit for women workers than for insured men.

[47] Great Britain is a conspicuous exception. Her contributory annuity, like all her social insurance benefits, is a flat rate for all insured workers, without regard to their wage level.

The provision for invalidity is less generous in most cases than that made for old age. Even the usual definition of invalidity is a harsh one. Most of the schemes require that the manual worker suffer a reduction of earning capacity of two-thirds or more than two-thirds, although non-manuals are frequently allowed to qualify for an invalidity pension on permanent loss of earning capacity of more than fifty percent. The severity of the qualification clause for manuals is related to the ever-present fear, not wholly unjustified, that invalidity insurance will be imposed upon by older workers who are not really invalided but find it difficult to obtain employment in competition with younger men. If in administration of the insurance a liberal appraisal of the worker's physical disability is made where actual invalidity is present and strict compliance with the qualification clause is used only where imposition is believed to be present, the definition justifies itself. Obviously invalidity insurance cannot remain solvent if used as a species of unemployment insurance.

Placing too high a retirement age, of course, compounds administrative difficulties in connection with invalidity insurance, as the worker who has reached "economic old age," *i.e.*, the period when he can no longer hope to have regular work, yet cannot draw his annuity and so lacks regular income, will rapidly deteriorate physically.

Special "transitional provisions" directed at more adequate annuities for those workers who were past middle age when the insurance scheme began to function, than could be produced by their contributions, were included in all of the measures. This was done for the obvious reason that, due to the date of adoption of the system, the older workers were placed at great disadvantage as compared with the younger.

Below is indicated a table,[48] showing the relative size of old-age and invalidity pensions for eight selected countries. It has been assumed in preparing the table that the pensioner has a dependent wife of pensionable age, but no dependent children. In addition to showing the actual amount of pensions in the foreign currencies, to facilitate comparison by the American reader, the pension is stated in each case as a percentage of the laborer's wage in the country concerned.

It may be noted that the Dutch pension is a particularly small one. This is due to the fact that no worker's contribution is actually required. The worker contributes to the extent that he desires to add to this basic pension.

The most significant post-war enactment was that of Great Britain's contributory annuity plan in 1925,[49] after seventeen years' experience with gratuitous pensions for the "aged and deserving poor." A very important aspect of this shift lay in the fact that the gratuitous pension plan denuded of its "moral qualifications" clause was retained not just for the transitional period of launching the annuity program but as

[48] Adapted from a table in ARMSTRONG, INSURING THE ESSENTIALS (1932) 417.

[49] This added complete survivors' insurance as well as old-age insurance. See 15 & 16 Geo. V, c. 70 (1925).

CALCULATED WEEKLY OLD-AGE AND INVALIDITY PENSIONS FOR VARIOUS COUNTRIES IN RELATION TO WEEKLY WAGES IN THOSE COUNTRIES*

Country	*Unit*	*Old-Age Pension† (Weekly)*	*Invalidity Pension at Age 55 (Weekly)*	*Invalidity Pension at Age 40 (Weekly)*	*Weekly Wages Unskilled Labor in Engineering Trades*	*Old-Age Pension As a Percent of Wages*	*Invalidity Pension at 55 as a Percent of Wages*	*Invalidity Pension at 40 as Percent of Wages*
Belgium..........	francs.......	61.5	.....	.....	145.80	42.1	....	....
Czechoslovakia....	crowns......	87.50	74.04	35.85	170.26	51.4	43.4	31.6
France...........	francs.......	72.00	72.00	72.00	153.21	47.0	47.0	47.0
Germany..........	marks.......	12.15	10.62	8.02	34.89	34.8	30.4	23.0
Great Britain.....	shillings and pence.....	20/0	7/6	7/6	44/2	45.3	17.0	17.0
Hungary.........	pengos......	13.16	10.99	7.74	23.52	56.2	47.0	32.9
Italy............	lire.........	58.14	49.83	37.56	121.88	47.7	40.9	30.8
Netherlands......	florins.......	6.12	5.43	4.50	25.31	24.2	21.5	17.8

*The pensions have been calculated for a worker whose average wage during the whole period involved is equal to or falls within the same wage class as the average weekly wage paid to unskilled laborers in the engineering trades.
†Calculated for a worker and his wife at the age at which the benefits begin.

a permanent supplement to the contributory scheme. This was in recognition of the fact that the contributory program could not guarantee the entire population an income in old age. In fact, while it would do so for the great majority of persons whose income came from their labor rather than from property, it would not completely cover even this group. This was due to the fact that for administrative reasons already mentioned, it only reached the workers who spent their lives as wage earners in the employ of others and thus offered no protection to persons who, while equally dependent upon earnings, were self-employed.[50] Moreover it was accepted as inevitable that a certain proportion of persons from high income groups would, through business losses or unfortunate investments, come to financial grief in their old age.

The contributory annuity plan was set up and clearly designed to be the standard old-age security device which in time would carry the major load and the gratuitous pension program was retained to provide for the minor group who fell outside the annuity scheme and who arrived at old age without subsistence income.

It was arranged that the premiums charged for the contributory annuities which were divided between the insured workers and their employers should be gradually stepped up over a long period of time.[51] They were calculated at an amount which, at their maximum, would, if placed at interest at four percent, furnish the promised

[50] See note 42, *supra*.

[51] For a full explanation of the technical basis of the scheme, including actuarial forecasts, etc., see (1926) 13 INT. LABOR REV. 361-381, 506-522. The continental schemes in contrast have been placed, at least in *theory*, chiefly upon a "reserve" or "accumulation" basis. It is generally believed, however, that contributions in all countries are concededly inadequate for straight "capitalization" of premiums. See in this connection, TRANSACTIONS OF 9TH INT. CONG. OF ACTUARIES, Vol. III (1930) (papers on old age insurance in various countries). *E.g.*, K. Lindner, actuarial adviser of the State Insurance Bank at Amsterdam, says (*id.* at p. 475) "It is a notable fact, that so far as I am aware, in state pension schemes no attempt has ever been made to provide capital sufficient to cover any future requirements."

Germany's reserves were completely wiped out during the inflation period 1921-1924. For ten years thereafter, the scheme was frankly upon a straight assessment basis. "Reformation," effective from 1934, is directed at putting the scheme, as rapidly as economic conditions will permit, on a *reserve* basis. For

annuities for the workers who contributed them. Instead, however, of placing them at interest, the government planned, while retaining a reserve plan on paper for guidance, to pay the current annuities out of current premiums. The government was pledged to supply in return for this, by future annual grant as needed, what was lost to the Pension Fund by not capitalizing the contributions.

The advantages of this technique are fiscal. It obviates the accumulation of large reserves with their attendant investment problems. It entails no sacrifice of safety as would a private venture proceeding on such a basis, since the social insurance program involves an entirely different situation. The private concern has no absolute assurance of a future. It may not be able to attract policy holders. The age distribution of the policy holders which it does secure is not assured. It must, to secure its ability to make good its promises to those who insure with it, build up out of the investment of the premiums, reserves from which the annuities can and will be paid. The social insurance program on the other hand has an assured future of constantly added policy holders who have no choice about insurance. Their age distribution is equally predictable and it will be "favorable" since they will be the workers of society. The future resources and obligations of the scheme thus can be forecast, and the stability of the government and its taxing power stand back of the government's promise to make good by future grant as needed what is lost by non-capitalization of the premiums.

The British program, in short, is based on a complete understanding of social insurance as distinguished from private commercial insurance, and Great Britain has adjusted a safe, orderly annuity scheme to what it deems to be the soundest principles of general government finance.

It should be remarked in making passing reference to the old-age assistance plans adopted in the United States during the late twenties,[52] that these state laws differed in a vital respect from the gratuitous pension provisions of other countries. They all, without exception, granted assistance to the needy old person only when he did not have a spouse or children (or, in many cases, other listed relatives such as sisters and brothers) who were able to support him. The foreign measures, in contrast, judged the applicant on the basis of his own financial situation without forcing his dependence upon his children.

The American measures thus definitely were a mere variety of poor relief and the assistance grants did not deserve the term "pensions" which certain of the states have applied to them. Their chief contribution was that they marked a definite step away from the neglect of the aged which characterized the shameful almshouse era

---

a full discussion of technical basis of present scheme and projected plans, see 21 INT. LABOR REV. (March, April, October, 1935) 398-418, 539-554, and 22 *id.* 515-522.

The French system is, professedly at least, dominantly a "*reserve*" rather than "pay-as-you-go" scheme. Guarantee of a minimum pension, however, and confessedly inadequate premiums make a state subsidy implicit if pension claims are to be met. For complete explanation of the actuarial basis of the French scheme, see Mowbray, *The New French Social Insurance Law*, 17 PROCEEDINGS OF THE CASUALTY ACTUARIAL SOCIETY (1931) 241-263.

[52] For a graphic analysis of these laws, see 39 U. S. MONTHLY LABOR REV. 255; 41 *id.* 303.

from which this country has so lately emerged. The efforts made to secure the passage of these measures, moreover, educated the citizenry both to the existence of a serious old-age dependency problem and to the need of systematic provision of old-age security other than enforced institutional care.[53]

In summary it may be stated that in the course of the half century that has elapsed since Germany launched the first compulsory annuity program for industrial workers, various methods of attacking the problem of old-age dependency have been tried. The two techniques for achieving old-age security which have received major attention are contributory annuities and gratuitous pensions for needy and deserving aged. Resting as they do upon different philosophical bases, for a long period these were deemed mutually exclusive remedial programs between which countries should choose. The gratuitous pension plan, for the "worthy poor" for twenty years or so attracted more interest perhaps than old-age insurance, voluntary or compulsory.[54] Experience with such provision, however, convinced most countries that in practical operation it tended to become relief for the needy rather than reward for the worthy and that, as such, it was both a more costly and a less satisfactory old-age security device than a contributory annuity program. The latter, by putting provision for old age on a business-like basis of steady building during working years of annuity rights in old age, removed pensions altogether from the undesirable sphere of poor relief. Since, moreover, the annuity was not conditioned upon "need," the worker derived the full advantage of any savings he was able to accumulate.[55] Thus self-help was promoted, not discouraged. The contributions from the insured workers and their employers, which furnished the major part of the funds needed for the annuities, relieved the general treasury of substantial burden.

The limiting of compulsory insurance to wage earners, for persuasive administrative reasons has had almost universal approval and for similar reasons coverage of certain groups has been deferred in some cases and has been provided for in a special separate scheme in others. The undesirability of omitting from the scheme self-employed workers of earning capacity similar to that of the insured group has been universally recognized. Their voluntary participation in the annuity scheme has been encouraged and in one country of major importance, Great Britain, some of the manual self-employed now are included in the compulsory system by an ingenious administrative device. Lastly it has become increasingly apparent abroad that the supplementing of the contributory insurance arrangements, compulsory and voluntary, by a gratuitous pension plan to provide for those who arrive at old age without either private means or an annuity, is essential to a rounded-out program of old-age security.

[53] For an excellent picture of this problem, see Rubinow, The Quest for Security (1934) cs. XVIII-XXIII, inclusive. It should be noted that under Arizona's law, Stat. 1933, c. 34, the income and property of the *spouse* only—and not that of the *children* of the applicant—is pertinent.

[54] See *id.*, c. XXIV, for an interesting comparison of "straight pensions" and "contributory annuities"; and see Armstrong, Insuring the Essentials (1932) 431-2.

[55] It should be remarked, however, that the state subsidy is not paid to the pensioner of high income under the laws of Czechoslovakia, Int. Labor Office, Legis. Series 1928, Cz. 2, §123 (4); Luxemburg (non-manual workers), *id.*, 1931, Lux. 2, §16 (d); and Sweden, *id.*, 1921, Swe. 2, §14.

THE DEVELOPMENT OF THE OLD-AGE INSURANCE PROVISIONS OF THE SOCIAL SECURITY ACT

J. Douglas Brown*

When on August 14, 1935, President Roosevelt signed the Social Security Act,[1] he approved the inauguration of a program of old-age insurance which will include within its coverage more than twenty-five million people. Embodied in Titles II and VIII of the Act, this program constitutes the largest single system of social insurance in the world. Under Title II, the Act provides for the establishment by the federal government of an old-age reserve account and for the payment of old-age and death benefits. Title VIII provides for a system of income and excise taxes to be levied on a large proportion of the employees and employers of the country. Although there is no direct connection between these two titles, the benefits paid under Title II of the Act are to be computed on the *same wages* received in the *same employments* upon which the taxes under Title VIII of the Act are levied.[2]

The affixing of the President's signature terminated a year of intensive planning and discussion of this program of old-age insurance. In this short period of time, the results of experience with old-age security programs both at home and abroad were restudied and evaluated. The special characteristics of American economic and social life and of the American legal system were analyzed in their relation to improved techniques of meeting the problem of mounting old-age dependency. The outcome of these studies and discussions was the adoption of a technique in public welfare administration new to this country.

The enactment of the old-age insurance provisions of the Social Security Act is, however, but the first step in a long process of evolution. A social insurance program of such immense size and widespread influence will require a generation or more of adjustment in meeting the actuarial, administrative, financial and social problems which experience is bound to raise. Regardless of the care exercised in planning a

* A.B., 1920, A.M., 1921, Ph.D., 1928, Princeton University. Professor of Economics and Director of the Industrial Relations Section, Princeton University. Staff Consultant, Committee on Economic Security, 1934-35; Member, President's Emergency Committee for Employment, 1930-31; Member, Advisory Committee on Employment to Federal Coördinator of Transportation, 1933-35; Consultant, New Jersey Social Security Commission, 1935-36. Co-author, *The Labor Banking Movement in the United States* (1929); *Facing the Facts, an Economic Diagnosis* (1932).

[1] Public, No. 271, 74th Cong., 1st Sess., 49 Stat. 620.

[2] Compare §210 (a) with §811 (a) and §210 (b) with §811 (b).

system of old-age insurance, the great mass of experience necessary in its perfection is forthcoming only after operations begin.

In the study of biology, the rapid development of an organism in the embryonic stage of life is perhaps more interesting to observe than is the slow growth which follows birth. So in the evolution of a complex governmental program, the stage of research and recommendation offers many opportunities for critical analysis. In the following brief account, the development of a few of the more important features of the old-age insurance program is reported. Emphasis has been placed on the reasoning that lies behind these provisions rather than the chronology of their genesis.[3]

THE EXTENSION OF OLD-AGE ASSISTANCE

In its recommendation for the establishment of a plan for federal subsidization of state old-age assistance programs, the Committee on Economic Security was in large measure but extending and supplementing the principles inherent in the succession of old-age pension bills which had already been urged upon Congress.[4] As a logical next step, the major provisions of Title I of the Act were seldom challenged in the

[3] On account of limitations of space, many phases of the history of the old-age security provisions of the Social Security Act are omitted or treated but briefly in this article. The development of Title I, which established a program of federal subsidization of state old-age assistance systems, and the history of the ill-fated plan for a federal system of voluntary old-age annuities should be given much more consideration than is here possible. The rapid extension of the assistance technique in meeting old-age dependency constituted not only an important part of a coördinated program but was the historical and logical premise for the projection of a program on insurance. In the thought of those who developed the recommendations upon which the old-age provisions of the Act were based, the scheme for voluntary annuities rounded out an effective three-fold program in attacking the problem of old-age dependency.

Much of the legislative history of the Social Security Act as a whole is summarized by Professor Edwin E. Witte in his valuable article "An Historical Account of Unemployment Insurance in the Social Security Act" in the January issue of this periodical. 3 LAW AND CONTEMPORARY PROBLEMS, 157-169. Dr. Witte, who was Executive Director of the Committee on Economic Security, there explains the organization of that Committee, its staff, the Technical Board, the Advisory Council, and the other groups coöperating in the development of the social security program. He also outlines the various steps in the consideration of the bill in Congress. To avoid repetition, this historical background, common to both the unemployment insurance and old-age security features of the legislation, has been omitted in this article.

The section of the staff of the Committee on Economic Security assigned to the development of recommendations on old-age security included: Professor Barbara Nachtrieb Armstrong of the University of California; Mr. Murray W. Latimer, Chairman of the Railroad Retirement Board and also chairman of the sub-committee of the Technical Board on old-age security; Mr. Otto C. Richter, actuary of the American Telephone and Telegraph Company, who served as staff actuary; and the author of this article. Research assistants associated with the section included Miss Marianne Sakmann and Mr. Robert J. Myers. In the course of the revision of this part of the legislation in the congressional committees, Mr. Latimer was frequently called upon as adviser along with Dr. Witte and Mr. Eliot, Counsel of the cabinet committee.

The sub-committee of the Technical Board assigned to the consideration of recommendations on old-age security included in addition to Mr. Latimer: Mr. Otto S. Beyer, Labor Relations Director, Office of the Federal Coördinator of Transportation; Dr. Winfield D. Riefler, Executive Director, Central Statistical Board; Dr. Stuart A. Rice, Assistant Director, Bureau of the Census; and Dr. Victor N. Valgren, Senior Agricultural Economist, Department of Agriculture.

[4] For a complete list of bills on old-age pensions introduced in the United States Congress, see HASSE, A SELECTED LIST OF REFERENCES ON OLD-AGE SECURITY; THE UNITED STATES (Federal Emergency Relief Adm'n, 1935). For a short summary of earlier proposals for federal old-age pensions, see EPSTEIN, THE CHALLENGE OF THE AGED (1928) 259-262.

various stages of the development of the legislation. State old-age assistance programs and federal subsidization of unemployment relief had become accepted principles by the fall of 1934. Already 28 states and two territories had enacted old-age assistance laws. The operation of the Federal Emergency Relief Administration and the repeated attempts to enact the Dill-Connery Bill[5] had directed attention to need for federal grants-in-aid if state laws were to be encouraged and improved. By the time the Committee's recommendations reached Congress, the growing pressure for the Townsend Plan left no doubt but that federal assistance in this field of social security would be authorized.

For these reasons, the staff of the Committee on Economic Security assigned to old-age security assumed from the first that a part of its task was the precise formulation of the procedures and standards which should be incorporated in any legislation for the subsidization of state old-age assistance systems. The arguments for such systems as contrasted with other methods of old-age relief were convincing. No feasible system of old-age insurance would meet the immediate need, or cover the whole area of dependency. Although all of the procedures and standards incorporated in the final form of Title I of the Act, along with many alternative proposals, cannot be discussed at length, certain recommendations deserve special mention.

The Dill-Connery Bill for federal aid to state old-age assistance programs proved a most valuable basis for the formulation of Title I. This bill, however, provided for a federal subsidy of but one-third of state appropriations for old-age assistance. The staff recommended that this ratio be increased to one-half. It also recommended that the length of residence requirement permitted in approved state plans be lowered. It proposed, as in the Dill-Connery Bill, that state plans should be mandatory on all sub-divisions within the state, and that the age limit be fixed at 65—at least after a brief number of years. These and many other recommendations found their way into the Act.

At least two significant recommendations, proposed by the staff and embodied in the original bill presented to Congress, were not accepted by Congress. In order to standardize upward the character of the relief afforded under state systems, the staff proposed that approval for federal aid should be contingent upon the granting of a minimum of assistance, which, when added to other income, would be sufficient to provide the recipient "a reasonable subsistence compatible with decency and health." It soon became evident in Congressional hearings, however, that this savored too much of federal dictation. The staff also recommended the use of an individual or "recipient-and-spouse" means test rather than one covering various relatives liable for the support of the recipient. It was believed that needy old persons, neglected by their relatives, should be granted assistance, with the possibility of legal action by the state against the relatives in order to recover the costs of such

[5] This bill, S. 493, 73rd Cong., 1st Sess. (1933), passed the Senate at the close of the second session of that Congress in 1934, but a motion to reconsider was passed immediately thereafter. For the text of the bill as passed, see 78 CONG. REC. 11313 (1934).

assistance. This recommendation also proved unpopular with those congressmen who viewed with alarm any questioning of the efficacy of filial responsibility. The Ways and Means Committee of the House of Representatives soon pruned these progressive features from the bill.

In general, however, Congress took kindly to the principle of old-age assistance which was the basis of Title I of the Act. With the expectation that this would be the case, the staff of the Committee was early convinced that a more constructive program should be developed to meet the shortcomings of this method of attack.

THE ADOPTION OF THE INSURANCE PRINCIPLE

The recommendation of a system of old-age insurance, unlike that for federal subsidization of state old-age assistance programs, went far beyond any earlier proposals. Neither in Congress nor among American students of social insurance had much thought been given to the adaptation of the insurance principle to old-age relief in this country. Intellectual interest in social insurance programs was largely centered on the unemployment problem. The debate between the adherents of the Wisconsin and Ohio plans of unemployment compensation had held the center of the stage during most of the depression. To the extent that national action seemed possible, proposals for federal encouragement to state unemployment compensation legislation absorbed the attention of both students and publicists. Political interest in the old-age problem was confined to a growing anxiety concerning the propaganda for outright federal grants. With this diversion of interest to other phases of social security, there was little, if any, specific pressure upon the Committee on Economic Security to propose the adoption of a social insurance technique in meeting the old-age problem of the country.

The single exception to this lack of active discussion of old-age insurance in this country was that accompanying the proposal and passage of the first Railroad Retirement Act.[6] Although this Act applied the principles of contributory old-age insurance to one of our outstanding industries, its swift enactment, its application to an industry frequently affected by special legislation, and the absorption of public attention in many other governmental activities, greatly lessened the impact of the Act on the public mind. A thorough study of the railroad retirement problem, which had been initiated in 1933 and had been continued after the passage of the Act, had, however, much influence on the thinking of the technicians later concerned with the general old-age security problem.

The proposal for old-age insurance came from the staff of the Committee on Economic Security assigned to the task of making recommendations for old-age security. Developed in the early days of staff work, it was studied and restudied by this section of the Committee's personnel. While recommendations for federal legislation for unemployment compensation were being discussed in the meetings of

[6] Act of June 27, 1934, 48 STAT. 1283, declared unconstitutional in Railroad Retirement Board, v. Alton R. R., 295 U. S. 330 (1935).

the Technical Board, various alternative plans for old-age insurance were being formulated and tested. At this stage of staff work, there seemed little likelihood that old-age insurance would be included in the recommendations of the Committee. Two circumstances led to this result, however. First, the reasons which convinced the staff of the necessity of a federal system of old-age annuities received increasing acceptance by the various officials and committees concerned in the development of security legislation. Second, external forces, mainly political, made the proposal of a comprehensive and constructive program of old-age security desirable.

The main reasons which convinced the staff of the necessity of adopting the principle of old-age insurance may be outlined briefly, although many corollary reasons must be omitted.

1. *The need to control the upward trend in the costs of old-age assistance.* Based on the forecasts of a sharply rising proportion of aged persons in the general population, of an increasing ratio of dependency among the superannuated group due to economic and social forces, and of an increasing readiness to accept relief status as assistance systems expanded, the projected trend of assistance expenditures on the part of the federal and state governments presented a serious prospect. The experience of other countries lent weight to the conclusion that sole reliance on the assistance technique could be but temporary.

2. *The need to prevent the social consequences of increasing dependence upon old-age assistance.* It was believed highly desirable to establish at the earliest possible time some means whereby workers through the exercise of thrift could protect themselves against dependency in old age. The insurance technique would permit benefits based on contributions as a matter of *right.* The principle that it was a proper function of government to afford a safe and convenient mechanism by which workers could free themselves from reliance on relief in old age seemed convincing. While much of the emphasis on the "contributory-contractual" concept of social insurance was lost in the later development of a bill which separated the tax and benefit features of the system, there is no question of the importance of the concept in securing acceptance for the annuity principle.

3. *American experience with industrial pensions.* To most of the persons concerned with the development of the old-age benefit provisions of the Act, the growth of industrial and civil service pension schemes in this country were matters of first-hand observation. Various members of the staff, the Technical Board and the Advisory Council had been in close touch with such pension programs. The shift in industrial pension plans to the principle of employee contributions and the accumulation of individual pension "rights" seemed a forward step which might properly be reflected in a general program for old-age security. The shortcomings of private pension plans in meeting the needs of the whole population and the contrasts in purposes and techniques in private and public programs were recognized by the staff from the first, and emphasized in its recommendations.

4. *The experience of other countries with old-age assistance and insurance.* In

few fields of government policy are the resources of foreign experience of more value in projecting new programs than in that of social security. The staff had available not only first-hand knowledge of foreign programs for old-age security, but a large mass of studies and reports including those of the International Labour Office. The policies and experience of Great Britain in developing, first, old-age assistance and, later, contributory insurance were particularly suggestive. The experience of Germany and of many other countries throughout the world contributed to the conviction that, in constructing a workable program, old-age assistance should be supplemented by contributory insurance.

Throughout the development of the old-age benefit provisions of the Act, many other factors carried weight. The inadequacy of assistance grants, the need for new sources of revenue to insure adequate protection, the possibility of relating more closely the sources of revenue and the benefits afforded, the greater willingness of workers to contribute toward old-age benefits than to other forms of insurance, and the advantages of a uniform system which could be readily administered on a nation-wide basis all led to the conclusion that the insurance principle should be adopted.

THE PROPOSAL OF A NATIONAL SYSTEM

That a system of old-age insurance should be established on a federal rather than a federal-state coöperative basis was likewise a departure from accepted notions of the kind of social insurance procedure which was possible in this country. From the very first, however, the staff group in the field of old-age security was convinced of the necessity of a single national system, if the insurance principle were to be adopted. The lack of precedents or convictions for *any* particular form of old-age insurance in this country proved a marked advantage. Unlike unemployment compensation, old-age insurance had not become law or even the subject of investigation in any state. Once a formula for meeting the limitations of the federal constitution was accepted as feasible, the necessity as well as the advantages of a national system were increasingly appreciated by the various committees which later considered the proposal.

The main reasons advanced for national administration were as follows:

1. The mobility of population across state lines made the use of the actuarial procedures necessary in any workable plan impossible on any but a country-wide base. While such estimates as those of population growth, age distribution, and mortality could be developed with sufficient accuracy for the total population, future migrations of young or old persons from one state to another, whether for climatic considerations or as a result of shifts in industry, made such estimates untenable if constructed on the basis of a single state. The operation of 48 separate systems of old-age insurance would involve virtually insuperable administrative difficulties, excessive costs, and almost certain failure in many states. Some of the most desirable features of social insurance would be lost were the problem of old-age security attacked in this way.

2. Aside from the actuarial problems involved in state administration of old-age insurance, many other disadvantages of separate state systems are apparent after even casual examination. With varying standards of benefits and the probability that many states would fail to act, large numbers of workers moving from one state to another in the course of adult life would reach old age without adequate protection. The mobility of labor would be affected if there were any considerable variations in rates of contribution or benefits. Federal administration, on the other hand, would afford uniform standards over the entire area.

3. The accumulation of reserves by 48 states would involve both investment and administrative problems of serious proportions. Not only might the degree of safety and the adequacy of funds vary, but the effects of diverse investment policies upon the credit structure of the country might prove unfortunate. Furthermore, the transfer of individual credits from the reserve account of one state to that of another would require a great amount of administrative labor. Where the reserve policies of states varied in the degree to which "accrued liabilities" were funded, the transfer of individual credits would lead to difficult adjustments in equities.

4. Varying rates of state taxes upon employers would affect the competitive costs of doing business as well as complicate the accounting procedures of interstate corporations. For such corporations, the adjustment of industrial pension plans to various state old-age insurance programs would become a most discouraging task.

5. The argument for state experimentation with social insurance techniques has much less validity in the case of old-age insurance than in the case of unemployment or sickness insurance since fifty to seventy-five years are required to test a system through one complete life cycle. The confusion of various systems in all stages of maturity would, without doubt, soon kill any urge toward continued experimentation.

6. Finally, the routine character of the administration of old-age insurance makes it more adapted to large scale operation. Since rates of contribution would be uniform and benefits would be based on past records alone, with little, if any, discretionary determination, the machinery for administering an old-age insurance system would be much simpler than that for administering unemployment compensation. With broad policies determined by a central federal authority, operating procedures could be reduced to standardized routines. The advantages in economy and convenience resulting from such a uniformity of procedure alone seemed to warrant the paralleling of old-age insurance with such services as the federal postal system rather than incurring the vagaries of state workmen's compensation administrations.

Such reasons proved convincing to the staff and the other groups which considered the problem. Once the advantages of uniform standards and centralized administration were explained, little opposition to this feature of the proposed system was raised except on the question of constitutionality.

ADJUSTMENT TO CONSTITUTIONAL LIMITATIONS

With state systems of old-age insurance a practical impossibility, the development of a formula for federal action within constitutional limitations was early recognized as the key to a sound solution of the problem. The proposal to separate the contribution and benefit features of the legislation into two separate measures based on the taxing and appropriation powers of the federal government, was advanced early in the deliberations of the staff and the Technical Board. The absence of any need for elaborate regulatory material in either measure gave basis for the hope that the courts would not question the exercise of these broad federal powers, if clear-cut separation were possible. The staff was bolstered in this hope by the approval of the plan by a number of outstanding students of constitutional law.

The drafting of two distinctly separate titles covering the tax and benefit features of the proposed system proved a difficult task. Since the contributions, now taxes, were necessarily covered into the general funds of the Treasury, some formula had to be developed for the reappropriation of an equivalent amount from general funds to an old-age reserve account. To avoid any direct connection between benefits and tax payments in the language of the legislation, benefits were based upon wages rather than upon tax payments. The designation of the amount that should be repaid to the heirs of a deceased contributor could no longer be stated as "contributions plus interest" but had to become a percentage of wages, regardless of the precise time when taxes were paid. Many other questions arose. It was only at the time when the bill was undergoing a thorough revision in the House Ways and Means Committee that satisfactory solutions were found.

As a result of this necessary adjustment to the exigencies of constitutional law, the character of the scheme was fundamentally different from that first considered by the staff. With the legal separation of contributions and benefits, the system lost much of the "contractual" atmosphere of contributory insurance. All social insurance is, of course, subject to legislative revision. But the need to cover taxes into the general funds of the Treasury and to depend upon current appropriations of Congress to maintain an old-age reserve account introduced a degree of legislative discretion which the proponents of the plan would have preferred to avoid.[7]

THE PROBLEM OF FINANCIAL ADMINISTRATION

Few problems faced in the development of the old-age benefit provisions of the Social Security Act were more fundamental or more involved than that of constructing a workable program for financing the plan. The whole complex of rates of

[7] In contrast to the disjointed program of benefits and taxes embodied in Titles II and VIII of the Social Security Act, the old-age insurance systems of other countries offer several important advantages. Under these systems a single insurance institution is established which is responsible for the collection of contributions, the investment of reserves, and the disbursement of benefits. Under such systems benefits are virtually guaranteed and legislative discretion can be reduced to a minimum. Perhaps in the evolution of our system of constitutional law, some means will develop which will permit the reorganization of our old-age insurance mechanism along these lines.

contributions and benefits, of amounts of possible governmental subsidies, of the investment of funds, and of the economic and political interactions of public and private finance, was bound up in the character of the reserve policy upon which the system should be based.

In the early days of staff work, two financial programs were projected in order to delimit the field of choice. These programs became the subject of repeated conferences with the technical boards coöperating with the staff. One scheme was based on the proposal that full benefits should be paid to older workers as though they had made contributions to the system throughout their working lives. At the other extreme, a second scheme was developed which made no special provision for older workers but gave them precisely those benefits which the contributions made on their behalf would finance. Actuarial studies indicated that both schemes raised serious financial difficulties. The first plan involved heavy, sudden tax burdens on industry and workers, excessive subsidies by government, reserves ultimately totalling 90 to 100 billion dollars, and unnecessarily large benefits in the early years from the standpoint of a reasonable social security program.

The second plan, likewise, was found to involve serious objections. Should the rate of contribution be set at 4%, for example, but $10.19 a month would be provided to a person contributing to the system for fifteen years on an average monthly wage of $100. The social and political implications of such limited benefits were sufficient to militate against the choice of a scheme which would afford no substantial reduction in old-age dependency for more than a generation. This scheme also involved large reserves estimated to reach 50 to 60 billions of dollars in the years to come.

In order to arrive at a workable program, a series of compromise plans were projected by the staff and discussed with the technical committees in an effort to afford reasonably adequate benefits, moderately increasing contributions, and a reserve within the limits of normal fiscal operations. A *maximum* reserve of ten billion was considered practical from a fiscal standpoint. The theoretical advantages of a completely pay-as-you-go policy were considered, but both the adjustment of contribution and benefit schedules in a gradually expanding system and the exposure of the system to cyclical fluctuations in income and disbursements led to the conviction that a moderate contingency reserve was necessary. The staff group was fully aware of the fact that such a reserve, if invested in federal securities, was essentially a bookkeeping device to disassociate the system as far as possible from dependence on continuous congressional direction in financing the system. While dependent on the credit of the federal government for the liquidation of such reserves in time of need, the resale or repayment of securities was considered preferable to a sudden revision of contribution schedules or dependence on emergency appropriations.

The financial schedules finally recommended by the staff appear in the original bill presented to Congress.[8] The joint rates of contribution proposed were arranged

[8] H. R. 4120, 74th Cong., 1st Sess. (1935).

on a gradually increasing level, commencing at 1% during the first five years of the system, and reaching a permanent level of 5% at the end of twenty years. The gradual rise served two purposes. It softened the impact of the tax on industry and workers and also prevented the accumulation of excessive reserves in the early years of the system before benefits reached a relatively constant volume.

The benefit schedule was divided into two categories; rates for workers entering the system within five years after its inauguration, including a cross-section of all eligible age groups in the population, and, second, rates for workers entering the system after five years. The initial rates of monthly benefits under these two schedules were, respectively, 15% and 10% of average monthly contributory wages. The temporary schedule limited monthly benefits to a maximum of 40%, but the permanent schedule permitted a variable upper limit approximating 50% based on the period during which contributions were paid.

The maximum reserve which would be accumulated under this plan was estimated as approximately $11,450,000,000. This would be reached soon after 1960. From then on disbursements would exceed income so that an increasing government subsidy would be needed to maintain this reserve intact. Although but $124,000,000 in 1965, the amount of the subsidy would approximate $1,100,000,000 by 1980.[9]

It was this financial program which after considerable discussion obtained the approval of the Technical Board, the committee of actuarial consultants, the Advisory Council and the Commitee on Economic Security. Embodied in the original bill presented to Congress in January, 1935, it became the basis of the hearings before the Committee on Ways and Means in the House of Representatives and the Committee on Finance in the Senate.

In the course of the hearings on the bill Secretary Morgenthau proposed a revision of the financial schedules of the plan which seriously altered the balance that the Committee's staff had striven to secure.[10] In order to place the scheme on a "self-sufficing" basis and to avoid the prospect of governmental subsidies, he suggested that the tax schedule be raised. Instead of graduated rates rising from one to five per cent over a twenty-year period, he proposed a scale increasing from two to six per cent in twelve years. The reserve which would accumulate under this program was estimated as 36 billion dollars by 1960 and 50 billion by 1980. Despite the serious effects which this tax and reserve program involved, the proposal of the Secretary of the Treasury was adopted with little change by the Ways and Means Committee. At the same time, a revised schedule of benefits was adopted to replace the temporary and permanent schedules originally proposed. This revised schedule, which is em-

[9] The coverage of the system was later altered by the Committee on Economic Security to include farm labor and domestics. This change increased considerably the totals involved in the financial program recommended by the staff. However, these classes of employees, along with certain others, were excluded from coverage in the revision of the bill in Congress.

[10] Statement of Hon. Henry Morgenthau, Jr., Hearings before House Ways and Means Committee on H. R. 4120 (Economic Security Act) (Feb. 5, 1935) 897-900.

bodied in the Act as passed, was a marked improvement over the original schedule on both technical and legislative grounds.[11]

THE PRINCIPLE OF GOVERNMENT SUBSIDIES

The proposal for federal subsidization of the old-age insurance system, as originally advanced by the staff, was not simply a device for balancing income and disbursements. The staff was convinced that the government should participate in the financial cost of the system. The contributory insurance system would in years to come assume an increasing proportion of public cost of old-age security. Employers, and especially workers, it was believed, should not be expected to bear the full burden of the "unearned" benefits which hastened this shift in the early years of the system. Experience abroad clearly pointed to the wisdom of governmental subsidization. In constructing a workable reserve program, eventual subsidies seemed inescapable if one were to avoid the necessity of accumulating huge reserves with which to meet future drains. The current economic effect of subsidies seemed indistinguishable from federal payments of "interest" on the scale which huge reserves would involve. But the most important reason for governmental subsidies is summed up in the following passage from the report of the old-age security staff:

> "The quality of self-respect which perhaps more than any other helps to build and maintain a sturdy community has an important dollar and cent value to society. Government contribution to social insurance is based upon the recognition of this situation. It amounts to a dedication to the policy of putting public funds in keeping people out of a state of destitution in substitution for the policy of charitable assistance . . . after dependency has become a fact."

THE IMPACT OF OLD-AGE INSURANCE ON PRIVATE ANNUITY PROGRAMS

Two significant developments in the course of congressional deliberations on the old-age provisions of the Social Security Act demonstrated the close relationship which exists between public and private programs for old-age protection. The first was the early demise, the resurrection, and final elimination of the proposal for voluntary old-age annuities. The second was the campaign for the Clark Amendment for the exemption of approved company pension plans from coverage under the Act.

The proposal of a system of voluntary governmental annuities originated in the staff of the Committee on Economic Security. It was believed advisable to provide a means whereby the large number of wage-earners, such as farm laborers and

[11] Space does not permit a discussion of the serious effects which may result from the adoption of the excessive schedule of taxes proposed by Secretary Morgenthau. Not only may unnecessarily large amounts of funds be diverted from consumption to capital expenditure, but the fiscal policy of the federal government will have to be adjusted to the rapidly mounting flow of tax funds. Whether this will lead to governmental extravagance or the reduction of other federal taxes, the result will be unfortunate. Furthermore, the possible effects on private finance may well cause apprehension. When these consequences are better understood, there is every likelihood that the tax schedule will be reduced to rates more closely approximating those originally proposed. If such a reduction should occur within the next few years, little damage will be done.

domestic servants, who were not covered by the compulsory program, could purchase modest old-age annuities at cost on an instalment basis. Operated in conjunction with the compulsory program, there was much reason to believe that a growing number of self-employed persons, such as farmers, shop-keepers, and housewives, might be attracted by the economy, safety and convenience of this method of saving for old age. Incorporated as Title V of the original bill, this plan was discarded by the House Ways and Means Committee. Reinserted by the Senate Finance Committee, it was killed a second time on the floor of the Senate. The principal reason advanced in opposition was that the scheme constituted an invasion by government into the field of private insurance.

The Clark Amendment proved one of the most serious obstacles to the enactment of a sound program of old-age insurance. The pressure for its inclusion was in large measure the result of a misunderstanding of the true effect of the federal insurance program on existing pension plans. As passed by the Senate, the amendment provided that wherever a private plan paid equally favorable benefits and met with certain other conditions, the Social Security Board should exempt both the employer operating the plan and his employees from the payment of the taxes under Title VIII.[12] The amendment failed to protect either the government or the exempted workers from many of the dangers which might arise under such an arrangement. The great majority of employers who supported the exemption principle failed to appreciate the sharply increased costs and the burdensome administration which any such device would entail if adequately safeguarded. Furthermore, the amendment not only ran counter to the basic principles of social insurance but, by tying together the tax and benefit features of the program, would greatly increase the chances of successful attack upon its constitutionality.

Since the House of Representatives refused to accept the Clark Amendment, the matter was referred to the conference committee assigned to the bill. Despite protracted discussion, this committee was unable to work out any satisfactory solution of the many difficulties involved in safeguarding an exemption provision. The proponents of the amendment finally agreed to concede the passage of the Act without such a provision, if an interim committee were assigned the task of preparing a revised amendment for introduction in the following session of Congress.

Meanwhile an increasing number of industrial executives have come to realize the impracticality and costliness of attempting to duplicate in their own plans the basic protection afforded by the federal insurance system. Already many companies have revised their pension plans so that they will supplement this basic protection. The difficulties faced by the interim committee in drafting a workable amendment still seem insuperable. With little support remaining, the campaign for special exemptions now seems to be largely a matter of history.

The development of the many other features of the old-age insurance provisions

[12] For the text of this amendment, see 79 Cong. Rec. 9442 (1935).

of the Social Security Act involved a similar history of study and adjustment. The problems of coverage, the tax base, the death benefit, the qualifications for old-age benefits in relation to contributions and employment, the graduation of benefits according to earnings; administration; enforcement; and the investment of funds were necessarily the subjects of a great deal of study and discussion. From the first meetings of the staff in early September, 1934, until the final enactment of the law in August, 1935, new problems arose and further adjustments proved necessary. The most important changes in the plan were made in the Ways and Means Committee. It was at this stage that time permitted the revision and improvement of various features of the bill to a degree impossible in the very limited period which was assigned to the drafting of the original recommendations into law. With political, legal, and technical talents concentrated on the measure, the old-age benefit features of the bill approached their final form. After many weeks of further congressional deliberation and delay, Titles II and VIII of the Social Security Act along with Title I became the law of the land. How long they will so remain rests with the Supreme Court and the people of the United States.

FEDERAL OLD-AGE INSURANCE: BENEFIT PAYMENTS AND TAX COLLECTION

David F. Cavers*

Title II, "Federal Old-Age Benefits," and Title VIII, "Taxes with Respect to Employment," of the Social Security Act form, if combined, what is somewhat inaccurately known as the Federal Old-Age Insurance System. The development of this legislation and the salient problems it presents are dealt with in other articles in this symposium. The purpose of this article is merely to sketch the mechanism which these titles have created and, without venturing too far into the realm of prophecy, to suggest some of the administrative problems which may be encountered in its operation.

Before an examination of the separate parts of the system is undertaken, a rough sketch of the whole may be useful. Title II establishes an Old-Age Reserve Account[1] in the Treasury to which appropriations are to be made annually in amounts, determined actuarially on a reserve basis at a 3 per cent interest rate, sufficient to meet the benefit payments required under the succeeding sections of the title. These benefit payments are to be made in monthly instalments to persons having attained age 65 who are no longer employed. Payments continue until the death of the recipient. They are based on the total wages received since 1936 by employees engaged in employments other than seven specifically excepted by the Act. Provision is made for death benefits payable to employees dying before having attained age 65. Benefits are payable regardless of the need of the recipient; millionaire and pauper alike may qualify.

Title VIII levies taxes on wages received by employees and paid by employers. The proceeds of these taxes are payable into the general funds of the Treasury and are not earmarked for benefit payments. However, as will be seen, the tax base is the same as the base for benefit payments, and the taxes were fixed with reference to the revenue requirements of the benefit system.

The benefit provisions are to be administered by the Social Security Board; the fiscal and revenue provisions, by the Treasury Department.

* B.S. in Econ., 1923, University of Pennsylvania; LL.B., 1926, Harvard University. Member of the New York Bar. Professor of Law, Duke University School of Law. Editor, Law and Contemporary Problems. Contributor to legal periodicals.

[1] The determination of the amount of the annual appropriation and the set-up and administration of the Old-Age Reserve Account will not be discussed in this article. For the consideration of this topic, see Modlin, *The Old-Age Reserve Account and its Economic Implications*, *infra*, p. 221.

From a legal standpoint, the old-age insurance provisions are relatively simple. The administrative difficulties which may be envisaged flow chiefly from the tremendous magnitude of the undertaking, although, as will be seen, the separation of the benefit provisions in Title II from the taxing provisions in Title VIII complicates the administrative task materially. This separation, as has been explained in Dr. Brown's paper,[2] was dictated by constitutional considerations. The separation is more than formal, but any effort to depict the system as a going concern must begin by breaking it down.

THE COVERAGE OF THE SYSTEM

Title II, in defining those "qualified individuals" who are entitled to receive benefit payments, specifies persons who have engaged in "employment" on some five days after December 31, 1936, and before attaining the age of 65, each day being in a different calendar year.[3] "Employment" in turn is subjected to definition, meaning "any service, of whatever nature, performed within the United States by an employee for his employer, except . . ."[4] and there follows a list of excepted employments, to be set forth shortly.

Turning to Title VIII one finds an income tax on employers with respect to wages received in "employment"[5] and an excise tax on every employer "with respect to having individuals in his employ" in "employment."[6] When one comes to examine the definition of "employment"[7] as used in these two sections one finds it almost identical[7a] to that employed in Title II to determine those entitled to receive benefit payments.

Still another link exists between the two titles. The benefit payments provided by Title II are to be calculated with reference to the total "wages" received by qualified individuals after December 31, 1936,[8] and the term "wages" is defined in a subsequent section of that title.[9] Now the two taxes imposed by Title VIII are expressed in terms of a percentage of the "wages" received and paid, respectively, by employees and employers subject to the taxes,[10] and the definition of "wages" in this title[11] is identical to that in Title II.

Combining the two titles, it appears, therefore, that benefits are payable only to those individuals who have contributed to the maintenance of the system by the payment of a tax upon their wages and that consequently the coverage of the benefit and taxing provisions is coterminous. And since the graduated scale of benefit payments is based, in substance if not in form, upon the amount of taxes paid by the ben-

[2] See Brown, *The Development of the Old-Age Insurance Provisions of the Social Security Act*, *supra*, p. 193.

[3] Social Security Act of Aug. 14, 1935, 49 STAT. 620, Tit. II, §210 (c).

[4] *Id.* §210 (b).

[5] *Id.*, Tit. VIII, §801.

[6] *Id.* §804.

[7] *Id.* §811 (b).

[7a] For the single exception, see note 12, *infra*.

[8] *Id.*, Tit. II, §202 (a).

[9] *Id.* §210 (a).

[10] *Id.*, Tit. VIII, §§801, 804.

[11] *Id.*, §811 (a).

eficiaries, the resemblance to a contractual system of insurance is real—although the creation of contractual obligations is carefully avoided.

The occupations which are excepted by both titles from the operation of the system are the following:[12]

"(1) Agricultural labor;
"(2) Domestic service in a private home;
"(3) Casual labor not in the course of the employer's trade or business;
"(4) Service performed as an officer or member of the crew of any vessel documented under the laws of the United States or of any foreign country;
"(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;
"(6) Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;
"(7) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual."

Obviously each of these will present administrative problems of definition, some of which have already been faced by the Bureau of Internal Revenue in drafting the regulations[13] promulgated under Title IX of the Act, levying an excise tax on employers of eight or more for the purposes of the federal-state unemployment compensation system. Five of the excepted occupations under Titles II and VIII are also excepted under Title IX and a sixth is substantially so.[14]

Title IX makes no attempt to place upon persons engaging independent contractors any accountability for the tax liability of those contractors or of their employees, nor does it render holding companies accountable for their subsidiaries. Perplexing problems as to the definition of the employing unit confronting draftsmen of state unemployment compensation acts are thereby avoided.[15] Of course, the problem of determining whether the status of a given individual is that of employee will remain.

The national character of the system also obviates the problems of interstate territorial coverage which arise under the state unemployment compensation acts.[16] The Act[17] boldly covers all service performed within the United States, regardless of the transitory character of that service here, the employer's place of business, or the place of contracting or of payment. It is difficult to escape the suspicion that the

[12] *Id.*, Tit. II, §210 (b), Tit. VIII, §811 (b). The latter section, cl. (4), also excepts "service performed by an individual who has attained the age of sixty-five" from employment subject to tax.

[13] See U. S. TREAS. REG. 90, art. 206 (1)-206 (3), 206 (5)-206 (7).

[14] The occupations numbered (1), (2), (5), (6), and (7) above are excepted by §907 (c) from the tax imposed by §901 of Title IX. Section 907 (c) (3) excepts "service performed as an officer or member of the crew of a vessel on the navigable waters of the United States."

[15] For a discussion of these problems, see Lotwin, *Coverage of State Unemployment Compensation Laws* (Jan. 1936) 3 LAW AND CONTEMPORARY PROBLEMS, 7, 8-11.

[16] For a discussion of these problems, see Lotwin, *supra* note 15, at 11-19.

[17] Social Security Act, Tit. II, §210 (b), Tit. VIII, §811 (b).

hard cases which such coverage may produce will be avoided by the simple device of tax evasion.

THE BENEFIT PAYMENTS

(a) *The Old-Age Annuity*

Monthly benefit payments begin on January 1, 1942, to those persons who are "qualified individuals" under the definition indicated above.[18] A qualification to that definition must, however, be noted. To avoid the necessity for making countless small payments, only those individuals are regarded as qualified whose total wages (a term which is here and will hereafter be used in the statutory sense) amount to $2,000.[19] Persons attaining the age of 65 without having earned this sum after 1936 or without having been employed in occupations covered by the Act at least one day in each of five calendar years after 1936 are entitled to receive a lump sum payment equal to 3½% of their total wages.[20] Claims for these payments will doubtless begin to be made shortly after January 1, 1937, by persons attaining age 65. Those whose claims mature early will receive more than the value of what they will have paid in taxes, but the sums thus distributed will not be large.

The amount of the monthly benefit payments is stated in terms of a percentage of the total wages received since December 1, 1936. The statutory definition of wages covers "all remuneration of employment" including "the cash value of all remuneration paid in any medium other than cash" up to $3,000 paid by any one employer with respect to employment during any calendar year.[21] For the purposes of calculating benefit payments (and, of course, tax payments as well) so much of a person's wages as exceeds $3,000 in any given year will be disregarded—except in the occasional case where the total wages received from two or more employers in one year exceeds that sum.

The percentage rates are graduated so as to afford those who are now close to age 65 and whose wages are low a more substantial benefit in proportion to their tax contribution than the younger and the more highly paid employees. This practice is common among private industrial pension plans, and, as is explained elsewhere in this symposium, to maintain a strict relationship between tax payments and benefits would result in absurdly low benefits to those now favored by the graduated scheme.[22] The percentage rates established for benefit payments are as follows:[23]

On the first $3,000 of wages	½%
On the next $42,000 of wages	1/12%
On all wages exceeding $45,000	1/24%

Assuming that a man attaining age 65 on January 1, 1946, had earned wages of $3,000 per year for the nine years subsequent to 1936. His monthly payment would

[18] *Id.*, Tit. II, §202 (a).

[19] *Id.* §210 (c) (3).

[20] *Id.* §204 (a).

[21] *Id.* §210 (a).

[22] See Brown, *supra* note 2, at p. 194.

[23] Social Security Act, Tit. II, §202 (a).

be ½% of the first $3,000, or $15.00, plus 1/12% on the remaining $24,000, or $20.00, making a total monthly benefit of $35.00. Obviously, this annual income of $420 would require either a marked readjustment in his living standards or resort to other sources of income. If, however, he were to continue in regular employment after attaining age 65, he would be denied a benefit for each month in which he worked thereafter,[24] although his wages for such work would not continue subject to tax.

The application of the percentage scale calls for no more than a simple exercise in arithmetic; the table in the footnote presents some representative results.[25] It should, however, be emphasized that the benefit rate is low and will be especially low for a number of years to come. The requirement of a minimum of $2,000 in total wages to qualify persons for monthly benefits results in a minimum benefit rate of $10 per month. The limitation of wages to $3,000 earned in any one year places a maximum on benefit payments which will, of course, increase slightly with each successive year. But by 1957 the largest possible benefit payment[25a] payable would be $56.25 per month and a man who had averaged $1,500 per year throughout the 20-year period would receive but $37.50 per month. The Act, moreover, sets a maximum of $85.00 per month for benefit payments.[26] However, a man who had received not less than $3,000 per year for 45 years subsequent to December 31, 1936 and prior to attaining age 65, would lose but $2.50 per month by reason of this limitation.

(b) *Payments upon Death*

In two situations under the Federal Act, death benefits are payable: first, where a person dies prior to attaining age 65 but after having engaged in employment subject to the Act, and, second, where a person who is in receipt of benefits dies before the total benefit payments received are equal to 3½% of his total wages since 1936. The Act provides, in the former situation, that the estate of the decedent shall be paid 3½% of such total wages,[27] and, in the latter, that his estate shall receive the amount by which the benefits actually paid to him was less than that percentage.[28]

These two provisions thus operate to insure to employees subject to the Act a minimum return of at least 3½% of the wages on which they have paid a tax which, beginning at 1%, increases, as will be seen,[29] over a period of years to 3%. Those who die before the tax reaches the 3% rate or who die thereafter, having paid a lower

[24] *Id.* §202 (d).

[25] The following table is taken from the Report of the Senate Finance Committee on the Social Security Bill, Sen. Rep. No. 628, 74th Cong., 1st Sess. (1935) 8.

ILLUSTRATIVE MONTHLY BENEFITS

Average monthly salary (dollars)	*Years of employment* 10	20	30	40
50	$17.50	$22.50	$27.50	$32.50
100	22.50	32.50	42.50	51.25
150	27.50	42.50	53.75	61.25
200	32.50	51.25	61.25	71.25
250	37.50	56.25	68.75	81.25

[25a] Disregarding instances where, as a result of a change of employment, "wages" exceeded $3,000 for a given year.

[26] Social Security Act, Tit. II, §202 (b).

[27] *Id.* §203 (a). [28] *Id.* §203 (b). [29] P. 207, *infra*.

tax rate on the greater portion of their total wages, will receive somewhat more in death benefits than they will have paid in taxes. The estates of those decedents entering employment after the 3% rate has been reached will probably not receive complete reimbursement since the ½% by which the death benefit exceeds the tax rate will not long serve to balance the interest accumulating on the tax contributions.[30]

Although for a number of years the death benefits (which are not deferred until 1942, as are the old-age benefits) will be negligible in amount, they will in time reach significant proportions, even for the small wage-earner. Thus a man who dies after having earned $1,000 per year for 10 years subsequent to 1936 will have secured for his estate the sum of $350. The importance of this sum will be more readily appreciated when it is realized that the average face value of the eighty-one million industrial life insurance policies outstanding in 1933 was little over $210 and the average amount of insurance carried per insured was only about $300.[31]

The amount of the death benefits is not likely to reach proportions sufficiently large to affect adversely the sales of ordinary life insurance. Although no statutory maximum is specified, the $3,000 limitation on annual wages will operate to make it virtually impossible for death benefits ever to exceed $5,000 even after the system has been in operation 50 years. The average death benefit will, of course, be much lower.

(c) *Administration of Benefit Claims*

The Act does not attempt to specify the machinery through which benefit payments are to be administered beyond vesting the power to determine the amounts payable in the Social Security Board.[32] The Board, however, is accorded power to make such rules and regulations, not inconsistent with the Act, as may be necessary to its efficient administration.[33] It is through the exercise of this rule-making power that the administrative structure of the system will be created. And, although this is still in its preliminary stages, a few of the administrative problems may be anticipated.

The requirement that benefit payments be based on total wages received after

[30] A more precise form of relating the death benefit to contributions would have been to repay to the decedent's estate the amount contributed in taxes by the decedent, plus interest at a specified rate on the tax payments. But this method would have been administratively burdensome, and its adoption would have seriously impaired the separation between tax and benefit payments which the Act's draftsmen sought to maintain.

[31] See 1935 WORLD ALMANAC 284; TAYLOR, THE SOCIAL COST OF INDUSTRIAL LIFE INSURANCE (1933) 53-54. The effect of the death benefits of the federal system upon industrial insurance is hard to predict. It will not take many years of employment to accumulate benefit rights equal to those now obtained in industrial insurance. Since unemployment or a change in employment to an excepted occupation does not abrogate claims based on prior employment in occupations subject to the Act, the risk of lapse, so great in industrial insurance, is eliminated. The whole system can, it is true, be terminated or modified by Congress, but legislation reducing the claims of beneficiaries approaches the politically unthinkable. Possibly the stimulus given by the Social Security Act to interest in the insurance principle may redound to the benefit of the industrial insurance companies.

[32] Social Security Act, Tit. II, §§202-207, 210 (c). [33] *Id.*, Tit. XI, §1102.

December 31, 1936 requires the establishment of a tremendous system of records covering the employment record of, to begin with, about 25 million employees.[34] Since, however, the taxes levied by Title VIII are also based on the same wages it is evident that the machinery for the collection of taxes can be utilized to obtain the data necessary for the payment of benefits. This problem will be dealt with herein in connection with the tax collection problem.

The Act directs the Board to certify the names and addresses of applicants for benefits and the amount of the payments to which they are entitled to the Secretary of the Treasury who, "through the Division of Disbursement of the Treasury Department, and prior to audit or settlement by the General Accounting Office, shall make payment in accordance with the certification by the Board."[35] Certification by the Board does not, however, preclude it from making adjustments if it is later found that a beneficiary was entitled to a greater or less sum than that certified. Provision is made for these adjustments to be effected in connection with subsequent payments to him.[36] Where, however, the beneficiary has died before the ascertainment of the error in the certification, the amount of any underpayment will be paid to his estate and his estate will be liable for any overpayment.[37]

No doubt administrative machinery will be established for the determination of contested claims. But will rulings by the Board with respect thereto be subject to judicial review? The Act makes no provision for recourse to the courts by an aggrieved claimant, yet it does not expressly limit the claimant solely to an administrative remedy.[38] A very recent decision of the Supreme Court,[39] interpreting the Civil Service Retirement Act, holds that the claim of a government employee to an annuity thereunder is a claim "founded upon a law of Congress" within the meaning of the statutes authorizing suits against the United States. Although that act provides an administrative remedy the Court ruled that "in the absence of compelling language resort to the courts to assert a right which the statute creates will be deemed curtailed only so far as authority to decide is given to the administrative officer."[39a] The Retirement Act grants (as does Title II of the Social Security Act)[40] power to the administrative official to determine the questions of fact upon which the claims for annuities are based, but this was not held to preclude judicial review in a suit upon the claim in the District Court when the administrative determination is "arbitrary or capricious or unsupported by evidence," when the procedure followed fails to

[34] See Richter, *The Actuarial Basis of the Cost Estimates of Federal Old-Age Insurance, infra,* at p. 215.

[35] Social Security Act, Tit. II, §207.

[36] *Id.* §202 (c).

[37] *Id.* §§203 (c), 206.

[38] Such a limitation would be constitutional. Lynch v. U. S., 292 U. S. 571, 582 (1934).

[39] Dismuke v. U. S., 56 Sup. Ct. 400 (1936).

[39a] *Id.* at 403.

[40] All references to amounts on which payments to beneficiaries are based are stated in terms of amounts "the Board finds" or amounts "determined by the Board." See Social Security Act, Tit. II, §§202-206. "Qualified individuals" entitled to receive benefit payments are persons "with respect to whom it appears to the satisfaction of the Board" that the specified requirements have been met. *Id.* §210 (c). The language is apt for the grant of discretionary power, beyond reach of the writ of mandamus.

satisfy "elementary standards of fairness and reasonableness," or when, the facts having been conceded, the question becomes one as to the applicability of the law.[41] There is little in the language either of the two statutes or of the Court's opinion to suggest that a different result would be reached with respect to claims arising under Title II.[41a] It seems apparent, therefore, that a wide field for judicial review will remain open unless and until Congress sees fit to deny to beneficiaries all recourse to the courts.

It seems safe to predict that whatever machinery may be created by the Social Security Board for the hearing of claims of aggrieved beneficiaries, it will suffer from no lack of business, especially after claims begin to attain dimensions sufficiently large to nourish litigation. Doubtless, it will be found essential to make provisions for the hearing of claims (and, more important still, for the adjustment of errors in records long before the right to benefits accrues) in local offices throughout the country, with provision for review in regional offices or in Washington. The business of representing claimants is likely to prove inviting to the shyster and the runner, and regulations restricting the right to represent claimants—and also the compensation of the representatives—will probably become necessary.[42]

The Act protects benefit payments from the improvidence of the beneficiaries by declaring the right to further payments non-assignable at law or in equity and "none of the moneys paid or payable or rights existing under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law."[43] There is some question, however, whether, when payment of a death benefit is made to the beneficiary's estate, the proceeds will not be liable to be applied in satisfaction of the debts of the decedent.[44]

As a sanction against misrepresentation by applicants, one making "any false state-

[41] Dismuke v. U. S., 56 Sup. Ct. at 403.

[41a] The Court, *id.* at 402, points out that the Retirement Act provides that the employee "shall be entitled to an annuity." The Social Security Act, §202 (a), provides that "every qualified individual . . . shall be entitled to receive . . . an old-age benefit." However, the Court observes further: "The provision is mandatory, expresed in terms of the right of the employee, which is inseparable *from the correlative obligation of the employer, the United States.*" (Italics added.) I doubt, however, that the Court's reference to the United States as "the employer" has greater significance than a *descriptio personae*. The "obligation" referred to seems that arising from the statute, regardless of whether the retirement annuity system is regarded as contractual in character. Hence, even though a beneficiary's claim to an old-age benefit is not founded on contract, so long as the statute stands, he would have a right to the benefit, and the government would be subject to a correlative obligation.

[42] Such restrictions are embodied in many workmen's compensation and some unemployment compensation acts. They are briefly discussed in Dodd, *Administering Unemployment Compensation Benefit Claims* (Jan. 1936) 3 LAW AND CONTEMPORARY PROBLEMS, 107, 112-113.

[43] Social Security Act, Tit. II, §208.

[44] Special provision is made for the payment of death benefits of less than $500. The Board is authorized to prescribe regulations for the payment of such benefits to the persons found by it "to be entitled thereto under the law of the State in which the deceased was domiciled, without the necessity of compliance with the requirements of law with respect to the administration of such estate." *Id.* §205. It seems evident that such direct disbursements to the next-of-kin of beneficiaries would not be subject to the claims of their, or the decedents', creditors.

ment as to any material fact, knowing such statement to be false" is subject to a fine not to exceed $1,000 or imprisonment for not more than one year, or both.[45]

THE TAX PROVISIONS OF TITLE VIII

As has already been indicated, Title VIII levies two taxes, an income tax on employees[46] and an excise tax on employers.[47] Both taxes have the same bases—wages paid in employment not excepted from the Act, not exceeding $3,000 paid to any one person by any one employer in any calendar year. The rates for both taxes are also identical. These are indicated in the table following:

	Rate of Tax		
Calendar Year	*Percent of Wages Received by Employee*	*Percent of Wages Paid by Employer*	*Total*
1937, 1938, 1939	1	1	2
1940, 1941, 1942	1½	1½	3
1943, 1944, 1945	2	2	4
1946, 1947, 1948	2½	2½	5
1949 and thereafter	3	3	6

The income tax levied on employees' wages is to be collected by their employers who are made liable therefor and who must deduct it from the wages as and when paid.[48] The income tax is not deductible by the taxed employee in computing his net income for purposes of the regular income tax.[49]

The Bureau of Internal Revenue is charged with the collection of both taxes, the proceeds of which are paid to the Treasury as internal-revenue collections.[50] The Commissioner, with the approval of the Secretary of the Treasury, is authorized to make rules and regulations for the enforcement of the title.[51] This rule-making power extends to the determination of the time and conditions of paying the tax, a responsibility which presents perhaps the most difficult administrative problem posed by the entire Act.

TAX COLLECTION PROCEDURE

If the task of the Bureau of Internal Revenue were merely to insure the payment of the taxes levied by Title VIII, the job would be formidable enough but not nearly so herculean as that which an interlinear reading of the statute indicates it is expected to perform. The tax collection machinery, if a tremendous duplication of effort is to be avoided, must be so constructed as to provide a record of the wages received by taxed employees which can be used by the Social Security Board in determining the

[45] *Id.* §209.

[46] *Id.*, Tit. VIII, §801.

[47] *Id.* §804.

[48] *Id.* §802 (a). The employer is indemnified by this section against "claims and demands of any person for the amount of the" tax deducted.

[49] *Id.* §803.

[50] *Id.* §807 (a).

[51] *Id.* §807 (b). Paragraph (c) of this section renders applicable to the Title VIII taxes "all provisions of law including penalties, applicable with respect to any tax imposed by section 600 or section 800 of the Revenue Act of 1926, and the provisions of section 607 of the Revenue Act of 1934 . . . insofar as applicable and not inconsistent with the provisions of this title."

amount of benefits payable to them. Nowhere in Title VIII is this obligation placed upon the Bureau of Internal Revenue, but, fortunately for the scheme of separating the tax and benefit systems, the business of acquiring the data essential to the discharge of the Board's duties will not compel the Bureau to impose regulations which are foreign to its tax collecting function, even though regulations may be promulgated which but for this ulterior objective might otherwise be dispensed with.

For both the tax collection and benefit record purposes, it is obviously desirable that there be employed a means of identifying the taxpayer more precise than merely recording his name and address. In the not distant future, therefore, it is probable that every person in employment subject to the Act will be registered and a serial account number assigned to him, which will be used by both the Bureau and the Board. The registration process will not require the eliciting of much data concerning the registrant, but it will afford an opportunity to ascertain his age, a vital fact for the Board's records.[52] Upon the completion of the registration process, the Board will have a substantially complete record of the names and ages of all persons then within the system. Provision will doubtless be made for the registration of newcomers at the time they enter employment in occupations subject to the Act.

Since the employee's benefit payment rights are dependent on an accurate record of his wages being maintained by the Social Security Board and since it will derive its information from the fact of tax payments made on his behalf by his employer, it is important that the employee himself obtain a record of such tax payments so that he will have some evidence of his right to benefit payments. This consideration, together with the desirability of furnishing a simple mechanism for use by the small employer, suggested the possibility of utilizing a stamp book or card system of tax collection similar to that employed in some social insurance systems abroad. In such a system a card is issued to each registrant on which squares are ruled off and dated for each week in, say, the six months' period for which the card is issued. The employer purchases a stamp of a denomination equal to the total of his and his employee's taxes for a single week and attaches that stamp to the appropriate place on the card, thus indicating that the tax has been paid. At the end of the period, the employee turns the card in to the insurance authority and a new card is issued to him. The stamped cards, filed with the authority, constitute a record on which it may pay benefits to the insured.[53]

Provision for the adoption of some such scheme was made in Title VIII, the Commissioner of Internal Revenue being authorized to furnish to the Postmaster General stamps, coupon books, etc., to be sold by the Post Office Department to

[52] The significance of age is, of course, of less consequence than in life insurance where it determines the size of the premium. An overstatement of age will hasten the commencement of benefits, but it will diminish their amount, and the converse is true. Probably overstatements and understatements of age will tend to cancel out.

[53] For a brief description of the stamp card plan, accompanied by a facsimile of a card used in the British National Health Insurance System, see Statement of J. Douglas Brown, Hearings before the House Ways and Means Committee on H. R. 4120 (Economic Security Act) 74th Cong. 1st Sess. (1935) 246-247.

employers.[54] I am informed, however, that there is little likelihood of the adoption of the stamp system of tax collection for the Old-Age Insurance System. Among the principal objections to it seem to be the following: (1) In the systems where it is used abroad (and its use has been discontinued in several countries) all tax payments are for the same amount. Here, however, where tax payments are a percentage of wages, their amounts will vary with the wages from person to person and from week to week. Thus, the two taxes with respect to an hypothetical employee may run $1.22 one week, $0.98 the next, and $1.36 the week following. Obviously the business of supplying stamps in the denominations necessary to meet such variations would be a difficult task both for the government and for the employer, however alluring a prospect it might open up for the philatelist. (2) The stamp cards would not constitute reliable evidence on which to base benefit payments. Suppose father and son are both employed in occupations subject to the Act, but father, in his late fifties, earns less than his son. If son's stamps were placed in father's book, the latter's benefits, soon to be realized, would be augmented considerably. Despite criminal penalties,[55] stamp trading sessions around the family teakettle would be quite predictable. A traffic in stamps outside the family circle might also develop between young Esaus and elderly Jacobs. (3) For the large employer the handling of weekly stamp entries would be inconvenient unless satisfactory stamp meters were devised.

It is highly probable that instead of the stamp device the more orthodox method of the tax return filed by the employer will be resorted to. No information is as yet available as to the frequency with which such returns will have to be made. A prediction may be hazarded, however. Tax payments will be required to be made at relatively frequent intervals, perhaps monthly, but the returns for these will show only the total payroll and the total tax payable. Less frequently, returns will be required to show the break-down of that payroll among the individuals comprising it. This differentiation will at once insure a steady flow of tax payments and minimize the administrative burden of handling individual returns.

The problem of the form to be taken by the return indicating individual tax payments remains, so far as information is available, an unsolved problem. Illustrative of the nature of this problem and of the difficulties inherent in it are some suggestions which have been proffered for meeting them. One ingenious device calls for the use of attached duplicate cards for each employee, one of which is to be given to the employee and the other returned to the Bureau. Each card sets forth the name, address, account number, and wage record of the employee, and on the margin common to the two cards there is printed on both sides a series, in columns, of amounts ranging, say, from $10 to $500. The attached cards are to be separated in such manner as to divide the column containing the amount in this series closest to the total wages received by the employee during the period covered by the return at the point where that figure appears. If later the employer seeks to alter the written

[54] Social Security Act, Tit. VIII, §809. [55] *Id.* §810.

entry on the card showing the amount paid in order to reduce his tax, the lowered amount will not correspond to the figure at the point of separation. If the employee seeks to increase the entry on his card, a similar discrepancy will appear.

This device must face the objection that it or any system which obliges the employer to write in the employee's account number on the return will cause difficulty. The numbers inevitably will be long and the likelihood of clerical error considerable. Since the elaborate mechanical recording devices which the Board must employ will have to be organized numerically, the cost attributable to errors in account numbers will be serious.

A possible solution to this difficulty may be the issuance to each registrant of a metal plate, resembling in some respects an addressograph plate, which will bear his name and account number. This could be so designed as to fit into the payroll machines of the large employers or into a simple holder for use by small employers. Loss of the plate would, of course, create difficulties, but foreknowledge of these difficulties would foster care on the part of the owner.

Another method which has been suggested for assuring accurate records of individual wage-earnings is for the Social Security Board to prepare and send to each employer a return in duplicate listing all the employees with their account numbers whom the employer had listed in his preceding return. The employer would then enter the wages paid and the amount of the tax payable for each employee on this list who had remained in his employ, indicating those instances where employment had terminated and making appropriate additions for new employees. The duplicate of this return would be divisible into individual slips which would be given by the employer—or by the Board itself—to his employees to inform them of the tax payment. The burden imposed on the Board in preparing these returns would not be considerable, the employer would be aided, and the risk of clerical error diminished.

Neither this procedure nor that previously suggested anticipates reliance on the duplicate returns received by the employee to establish his claim, although they may serve as a check against error and against tax evasion by the employer. Where employee and employer collude to return wages at an amount lower than that actually paid, of course, none of the systems will afford protection. Self-interest on the part of most employees will be a safeguard against this, and the gains of tax evasion will not be so great as to tempt many employers to resort to it.[56] There is, of course, the usual safeguard of administrative surveillance, fortified by criminal penalties for false returns.

Where evasion will probably be most frequent will be in the employment of casual labor. Casual labor is excepted from the operation of the Act only if it is "not in the course of the employer's trade or business."[57] But many trades and

[56] What an employer gained on his payroll tax, he might lose on his income tax, since payrolls are deductible from income. Moreover, experience under the latter tax does not indicate much attempt at tax evasion by payroll padding.

[57] *Id.*, Tit. II, §210 (b) (3), Tit. VIII, §811 (b) (3).

businesses require casual labor frequently. A caterer, for example, does not maintain a large staff of waiters on his payroll ready for the emergency of a banquet. When his need arises, he sends forth a call which is responded to by those waiters of the vicinage who may be "at liberty." They do their stint and receive their stipend, often without being troubled to disclose their names. It is no easy task to devise a satisfactory method of tax collection and wage recording which will be effective and yet not unduly hamper the functioning of such informal methods of employment as this. Indeed, as one considers the diversity of occupations covered by the Act, it is difficult to suppose that any single method can be devised which will satisfactorily meet all situations. It seems safe to predict that ultimately, if not initially, a variety of procedures will be devised and adapted to varying types of employment.

However fragmentary may be the information as yet available with reference to the administrative set-up for the collection of the old-age insurance taxes, it is clearly evident that simplification of the employer's accounting burden is an objective which is being kept to the forefront and that those accounting systems offered to employers by commercial publishers soon after the passage of the Social Security Act, which called for a detailed inquiry into the life history and status of each employee, will prove wholly unnecessary.

ACTUARIAL BASIS OF COST ESTIMATES OF FEDERAL OLD-AGE INSURANCE

Otto C. Richter*

The recommendations of the Committee on Economic Security leading to the Contributory Old-Age Benefit Plan established by the Social Security Act were formulated only after a large number of plans, involving a variety of provisions as to contributions and benefits, had been studied by the Committee and its staff. In the case of each of these plans, an important factor in its consideration was the element of cost, as estimated by the actuarial consultants to the staff. For the information of those who may be interested in this phase of the existing social security legislation, there follows a brief non-technical description of the assumptions and procedures underlying these cost estimates.

In actual practice it was frequently necessary, because of the limited time available, to develop estimates for a plan currently under consideration from related estimates applying to one or more plans previously considered. To avoid the confusing detail involved in tracing the step-by-step evolution of such estimates, the present discussion will be limited to a description of basic assumptions and procedures as they relate to the plan finally adopted.

Projection of Population.

As a suitable basis for estimating the cost of public pension systems studied by the Committee, it was necessary at the start to obtain as accurate a picture as possible of the age distribution of the population in future years. To provide this statistical background, it was decided to project the present total population, by sex and age, for a period of 50 years in the future.

In selecting a period of 50 years, it was recognized that the true strain of pension benefits usually tends to be obscured by deceptively low disbursement requirements in the early years of operation of a plan, due to the fact that the group qualified for pensions in those years usually represents only a small fraction of the total group covered by the plan. As the plan continues in operation, however, the number and proportion of the total group eligible for pensions continue to increase, with a corresponding yearly increase in the amount required to pay pensions. In some plans—

* B.A., 1923, University of Michigan. Chief Statistician's Division, American Telephone and Telegraph Company. Actuarial consultant to the Committee on Economic Security. Fellow of the Actuarial Society of America; Fellow of the Casualty Actuarial Society; Associate of the American Institute of Actuaries.

such as that adopted in the Social Security Act—the average amount of pension per individual will also increase for many years, and in such cases the rate of increase in the annual amount required to pay pensions is considerably greater than if the average pension is relatively constant. Accordingly, illustrations of the year-to-year operations of the plan are likely to be misleading, unless the illustration is extended for a sufficient number of years to reflect the final level of average pensions and the ultimate relationship between the number of contributors and beneficiaries.

From the viewpoint of strict theory, the ultimate relationship between the age groups of a growing population would not be reached for a hundred years or more after the population has reached its maximum. It was found from test calculations, however, that, based on the assumed rates of mortality, the age distribution of the projected population 50 years hence would be sufficiently in line with the ultimate age distribution to make it unnecessary, as a practical matter, to carry the projection beyond that point.

Assumptions Underlying Projection

Starting with the total United States population of 122,775,000 as reported in the 1930 Census, it was assumed that this population would increase gradually to a maximum of 150 million in 1975 and would continue at that level thereafter. The maximum population assumed to be reached in this country is substantially in line with that indicated by Thompson and Whelpton's "medium" estimates of population, as described in "Population Trends in the United States." The actual 1930 figure was then connected with the estimated 1975 point by a smooth curve of the type characteristic of population-growth, with due regard to the trend of population prior to 1930 and to its probable gradual approach to the maximum. The total population in each year, as read from the curve, provided a satisfactory basis for estimating the yearly increments by way of births which were required as balancing items in connection with the detailed projection of the population by sex and age.

As to mortality, it was assumed for the purposes of this projection that future mortality rates by age would be in accordance with those developed by the Bureau of the Census from the 1920-1929 mortality experience of white males and white females in the Registration States of 1920. These rates, which were made available to the Committee's staff through the courtesy of the Director of the Census, reflect a substantial improvement in the mortality of the general population since 1910, the central experience year of the last complete life tables developed from population statistics. In their present use, no direct allowance was made for further improvement in mortality, but the application of death rates for white lives to a total population including a substantial proportion of colored lives resulted in some indirect allowance for possibly lower mortality in future years.

An allowance for the effect of immigration and emigration upon the future population of the United States was made by assuming that departures would balance arrivals during the five years ending in 1934, that there would be a net immigration

of 100,000 persons annually during the succeeding five years, and that there would be a net immigration of 200,000 persons annually thereafter. This assumption is closely similar to that made by Thompson and Whelpton as an approximation of what might occur if the present immigration quotas applicable to the countries in the Eastern Hemisphere were filled, and similar quotas were established for countries in the Western Hemisphere. The age distribution of the groups added to the population by way of immigration was also derived from data in this respect given by Thompson and Whelpton.

Results of Projection

As a result of the above-described projection, there were made available, in a form suitable for cost studies, detailed estimates as to the sex and age distribution of the total population in each year from 1930 to 1980, inclusive. It was clear from preliminary grouping and inspection of these results that they confirmed the conclusions of earlier investigators of population trends; namely, that this nation is facing, for many years to come, an increase not only in the number of aged persons, but also in the proportion of the total population included within this group. The projection indicated, for example, that the number of persons aged 65 and over would rise from slightly more than 6½ millions in 1930 to almost 11 millions in 1950 and to about 17 millions in 1980. During the same period, the indicated proportion which this group formed of the total population increased from 5.4% in 1930, to 7.7% in 1950, and to 11.3% in 1980.

It was appreciated by the Committee and staff that these specific estimates as to numbers and percentages involved assumptions which made them subject to a substantial probable error. At the same time, the unescapable trend toward an increasing number and proportion of the aged in the population obviously represented a factor of major significance which would need to be taken into consideration in drafting a public pension system having any reasonable prospects of permanence.

Pensioners under Contributory Plan

As a first step in the construction of estimates relating directly to the operation of the contributory pension plan, there was derived from the detailed results of the population projection the numbers of persons at the end of each year at ages 65 and over who had reached age 65 after the calendar year 1941. These persons comprise the population group from which will be drawn the pensioners under a plan which starts in 1937 and requires, as a condition for eligibility to pension, a qualifying period of five years of insured employment prior to the attainment of age 65. The number in this group at the end of 1942 consisted solely of the persons reaching age 65 in that year, namely, those shown at age 65 in the projected age distribution as of the end of the year. For the next year, the group consisted of the numbers shown at current attained ages 65 and 66, these numbers representing those reaching age 65 in 1943, plus the survivors of those who had reached age 65 in the preceding

year. By proceeding in a similar fashion, that is, by adding for each succeeding calendar year the next age group above the highest included in the preceding year, there was built up the required data in regard to the total numbers in the projected population in each year who had reached age 65 after 1941.

The next step consisted in estimating the proportion of the above-determined group who would be eligible for pensions under the contributory plan. This involved an analysis of the application of the contributory plan to the population engaged in gainful occupations. From the age and occupational distribution of the gainfully occupied, as shown in the 1930 Census, there was deducted from each age group the number of persons whose occupational classification seemed to indicate that they would be excluded from the contributory plan; namely, the self-employed, agricultural workers and domestic servants in private homes. The remaining numbers, comprising the gainfully occupied who presumably would be covered by the contributory plan, were then expressed as percentages of the total population in corresponding age groups. These percentages ranged from 43% at ages 20-24 to 23% at ages 60-64.

Assuming that the 1930 ratios of "insurable" employees (*i.e.*, employees who would be covered by the contributory plan) to total population would prevail in future years, and that all employees covered by the plan would meet the requirement of employment in at least five different years before reaching age 65, it followed that, for each age group in the population, the proportion qualified for old-age benefits upon attaining age 65 would be the maximum proportion of that age group who had been covered by the plan at any time during their prior period of active employment. For example, if 25% of the total population at age 60 were covered by the plan in 1937, the first year of operation of the plan, the same proportion of the total population reaching age 65 in 1942 would be qualified for old-age benefits. Similarly, if 45% of the population at age 25 were covered in 1937, the same percentage of the survivors of this group reaching age 65 in 1977 would be eligible for benefits at that time. Therefore, by applying such estimates of percentage coverage to the previously determined total population reaching age 65 after 1941, an estimate of the accumulating number of pensioners under the contributory plan was obtained. In this connection, rough allowance was made for probable increases in the percentages of total population engaged in employments covered by the plan, reflecting both past trends in this respect and the added incentive in future years toward engaging in insurable employment, due to the operation of the plan itself.

Estimated Coverage under Plan

The numbers of employees under age 65 who would be covered by the contributory plan in future years were derived from the preceding analysis of the gainfully occupied, less employees excluded by reason of age or occupation from the provisions of the plan. The initial coverage was estimated at about 25⅓ million employees, and it was assumed that this group would gradually increase to a max-

imum of 35 million in 1975. This allowance for an increase in future years reflected the expected growth in the total population and in the numbers of insurable employees within the age groups covered by the plan.

Assumption as to Average Annual Wage

A review of available data in regard to the average wages of employees comprising the insurable group revealed that there was little reliable information concerning this factor. From an actuarial viewpoint, it would have been desirable, of course, to have accurate statistics for this group showing the level and trend of wages by age from the time of entrance into insurable employment until the attainment of age 65. With the exception of data for a few scattered companies, whose wage treatment obviously was not representative of that applicable to the insurable group as a whole, information in this detail was not available and could not be procured in time to be of use in connection with the studies in progress. With reference to the broader question of the average wage of all employees combined, some indications of this amount were provided by fairly recent studies which had been carried through by the Department of Labor. In using the results of these studies as a basis for estimating average wages over long periods in the future, however, it was necessary to make rough allowance for the depressing influence of current economic conditions on wage rates in recent years. After making what seemed to be reasonable allowance for this factor, it was assumed that the average earnings of insurable employees throughout the entire period covered by the projection would be $1,100 per year, exclusive of the amounts by which individual salaries exceeded $3,000 annually.

Old-Age Benefits

The average annuity benefit payable to employees qualifying for retirement in each year after 1941 was estimated by accumulating the individual employee's annual pay, at the average rate, over the assumed period of his employment under the plan, and by applying to the aggregate wages so determined the sliding scale of annuity percentages specified in the plan. The resulting average annuities by year of granting were then multiplied by the estimated number of pensioners on the roll in each year, distributed according to calendar year of retirement, in order to obtain for each year an estimate of total annuity disbursements in respect of all pensioners on the roll.

It may be noted that in estimating annuities on the basis of average wage rates, without reference to the dispersion of individual wages about the average, the resulting annuity tends to be overstated, since full effect is not given to the lower percentage rates specified by the annuity formula as applicable to aggregate wages in excess of $45,000. In view of the fact that this overstatement would be limited to annuities granted after 1951, and that it appeared to be unlikely that the degree of

overstatement in those later years would be sufficient to affect appreciably the estimated total disbursements for annuities, no adjustment was made for this factor.

A second factor which may appear to result in an overestimate of the annuity benefits to be granted in future years is contained in the assumption that employees will continue in employment from the time of their entrance into the contributory plan until they reach 65 years of age. Considered literally, this assumption obviously will not be borne out by future experience under the plan. Experience and reasoning clearly indicate that many presently covered individuals will not remain continuously in insurable employment until they reach age 65; for example, persons transferring to employments not covered by the plan, or women withdrawing from gainful employment altogether by reason of marriage. The assumption was stated and used in this form, however, not in the thought that it represented a reasonable expectation as to the employment history of individuals, but rather as a convenient method of giving effect to an offsetting factor represented by employees first entering the insurable group in future years at advanced ages. Such additions to the group will tend to increase the annuity benefits payable in respect of a given amount of wages, due to the extra weight given to the first $3,000 of aggregate wages paid to any individual in the computation of his old-age benefit. For example, an insured employee earning $1,100 per year from age 45 to age 65 would be entitled under the plan to an old-age benefit, starting at age 65, in the amount of $30.83 per month. If this individual were replaced after 10 years of employment by a new entrant to the plan at the same age and pay, the taxes collected would not be changed, but the old-age benefits payable would be increased to $43.34 per month, that is, $21.67 to each of the two persons. The extent to which future withdrawals and additions to the insurable group will tend to offset one another in so far as pension costs are concerned must at present remain a matter for conjecture. As experience under the plan accumulates, the type of data required for measuring these elements of pension costs will gradually be made available.

Payments upon Death

The number of deaths among the insured group in each year of the projection was estimated by applying to the total number of contributing employees covered by the plan composite mortality rates reflecting the current age distribution of this group. The composite rates applicable at the beginning and end of the projection period were computed in detail and the rates for the intervening years were obtained by interpolation. The average death benefit was estimated by accumulating the annual wage of individual employees, at the assumed average rate, from time of entrance into the plan until date of death, and taking 3½% of this amount as the average payment upon death. The estimated total payments upon death in each year covered by the projection was then determined by multiplying the number of deaths by the average benefit. In these computations allowance was also made for

estimated payments under the plan upon the death of retired employees receiving old-age annuity benefits.

Estimated Taxes under Plan

The year-to-year revenue from the taxes levied by the Social Security Act for old-age benefit purposes was estimated by applying the scheduled tax rates for each calendar year to the total payroll of the insurable group, as determined by multiplying the number of employees in the group by the assumed average annual earnings of $1,100. In this connection, it was not necessary to separate the excise tax on employers from the income tax on employees, since the equal tax rates in both cases are applicable to the same payroll base.

Expenses of administering the contributory plan were estimated at 8⅓% of the total proceeds of the old-age benefit taxes where the combined tax rate upon employers and employees together was at the initial rate of 2% of payroll, 6⅔% where the combined tax rate was 3% of payroll, and 5% where the combined tax rate was 4% or more of payroll. These expense percentages were necessarily estimated on the basis of general considerations only, since at the time they were made details as to the administration of the plan were not available.

Progress of Reserve

The final step in estimating costs under the contributory plan consisted in bringing together the previously described elements of cost and taxes in the form of a schedule showing the progress of the reserve arising from the operation of the plan. Following is a summary of this schedule as it appeared in a report submitted by the Senate Committee on Finance in connection with the introduction of the Social Security Bill. For the purposes of the Senate Committee's report, the figures comprising this schedule were converted from the calendar year basis, on which they had been prepared originally, to the basis of the government's fiscal year ending June 30.

CONTRIBUTORY OLD-AGE BENEFIT PLAN

ESTIMATED APPROPRIATIONS, BENEFIT PAYMENTS, AND RESERVES
(IN MILLIONS OF DOLLARS)

Fiscal Year Ending June 30	*Appropriation for Reserve*	*Interest on Reserve*	*Benefit Payments*	*Balance in Reserve*
1937	255.5	0.	1.9	253.7
1938	513.5	7.6	7.2	767.5
1939	518.5	23.0	14.5	1,294.5
1940	662.2	38.8	22.0	1,973.6
1941	807.2	59.2	29.7	2,810.3
1942	814.8	84.4	52.8	3,656.6
1943	970.0	109.8	94.2	4,642.1
1944	1,126.6	139.3	142.9	5,765.1
1945	1,137.0	173.0	191.2	6,883.9
1946	1,291.4	206.5	249.2	8,132.7

1947	1,447.1	243.9	314.5	9,509.2
1948	1,460.1	285.2	377.4	10,877.0
1949	1,621.1	326.3	442.1	12,382.4
1950	1,783.3	371.5	505.5	14,031.7
1955	1,861.2	615.8	887.8	22,115.7
1960	1,939.1	844.2	1,379.9	29,543.9
1965	2,016.9	1,040.9	1,844.0	35,898.5
1970	2,094.8	1,210.9	2,303.5	41,366.7
1975	2,172.7	1,341.8	2,872.1	45,368.3
1980	2,180.5	1,406.0	3,511.3	46,942.7

The first column of the summarized schedule, headed "Appropriation for Reserve," represents the estimated net proceeds of the taxes called for by the contributory plan, after deduction of the estimated expenses of administering the plan. In this connection it should be pointed out that, while the provisions of the Social Security Act do not require Congress to appropriate the proceeds of these taxes to the Old-Age Reserve Account, it was assumed, for the purposes of these estimates, that the amount of the annual appropriations to the reserve would be determined on this basis.

The second column of the schedule, entitled "Interest on Reserve," represents interest credits at the rate of 3% per annum on the balance in the reserve at the end of the preceding year. In this connection, no adjustment was included for interest additions or deductions arising out of the current year's contributions and disbursements.

Benefit payments, as shown in the third column of the schedule, indicate the combined yearly disbursements for old-age annuity benefits and payments upon death, as determined by the previously described estimates. Since the contributory plan as finally adopted provides that old-age annuity benefits will start at age 65 only in case the employee has withdrawn from "regular" employment, the estimated old-age benefit payments included in this total are somewhat lower than those estimated, as previously described, on the assumption that these benefits would in every case start at the time the employee reached age 65. The reduction on this account reflects an average retirement age of about 67-½ years. Whether or not this largely arbitrary assumption as to the average age at retirement will be borne out by future experience under the plan constitutes one of the major uncertain factors entering into the estimated costs of the plan.

The final column in the schedule shows the estimated balance in reserve at the end of each year from 1937 to 1950, inclusive, and thereafter at the end of quinquennial periods up to 1980. The yearly increase in these indicated balances in reserve represents, of course, the excess of current appropriations plus interest credits over current disbursements for benefits.

The figures on the last line of the schedule, that is, those relating to the year 1980, are of major importance and interest, since they represent approximately the stabilized condition of the factors determining the cost of the contributory plan, if the plan

continues to operate in accordance with its present terms and provisions, and if the assumptions and estimates entering into the projection are realized. It is important to note that the reserve called for by this program reaches a maximum of almost $47 billion. The fact that interest on this reserve plus the current net proceeds of the old-age taxes are sufficient, with a little to spare, to meet the current disbursements under the plan, indicates that the plan is in actuarial balance. In other words, under the assumptions and estimates underlying this schedule, the present tax provisions of the contributory plan apparently are adequate to support the promised benefits.

General Considerations

It will be appreciated by the actuarially-minded that cost estimates such as those described in the foregoing paragraphs are of limited significance as an indication of the absolute cost elements of a particular plan in future years. Such estimates served an essential purpose, however, in providing a basis for comparison of alternative provisions as to contributions, benefits and other factors, which were considered in formulating the Committee's recommendations in regard to the contributory plan. In this connection, it should be pointed out that assumptions which are based upon insufficient data, and which may therefore be subject to a substantial probable error, entered into each set of cost estimates and did not affect appreciably the relationship between the cost of separate plans. In other words, the resulting comparative costs were probably substantially accurate as a measure of specific differences between plans under consideration, and this was their primary purpose.

As to the estimates applicable to the plan finally adopted, considered by itself, they at least indicate the general magnitude of the undertaking, the developing relationship between income and outgo, and the nature of the financial problems involved. Whether or not these particular estimates of the amount of income and outgo will be borne out quantitatively is almost wholly an academic question. For it is a practical certainty that the terms and provisions of the plan will be revised many times and in many ways before the period covered by these estimates has elapsed.

THE OLD-AGE RESERVE ACCOUNT AND ITS ECONOMIC IMPLICATIONS

George M. Modlin*

Provisions Affecting the Account

The Old-Age Reserve Account created by Title II of the Act is one of the most interesting and significant features of the social security program. Commencing in 1937 Congress is authorized to make yearly appropriations to the account "of an amount sufficient as an annual premium to provide for the payments required under this title, such amount to be determined on a reserve basis in accordance with accepted actuarial principles. . . ."[1] No mention is made in this title as to the source of these appropriations, but Title VIII of the Act provides for two new taxes which take effect January 1937, and the proceeds of these taxes are to be paid directly into the general funds of the Treasury. One tax is levied upon the wages of all the employees covered under Title II,[2] and the other, equal in amount, is imposed upon their employers.[3] The annual appropriations that Congress is authorized to make to the Reserve Account presumably will tend to correspond to the receipts from these two taxes. Constitutional considerations made it inexpedient to provide a more direct relationship between contributions and appropriations to the Account.

As payment of old-age benefits will not begin until January 1942, the appropriations to the Account will accumulate for five years with no disbursements from it, except relatively small amounts for death benefits. Moreover, it is estimated that not until about 1980 will annual disbursements equal the annual receipts from both appropriations and interest on the funds invested in the Reserve Account. It is believed the Account at that time will amount to about 47 billion dollars, and that thereafter it will remain at approximately this figure. The estimates of the growth of the Account on the page following appear in the Senate Report on the bill.[4]

The investment of the funds in the Reserve Account, as provided in Title II of the Act, must be made by the Secretary of the Treasury "only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal

* B.A., 1924, Wake Forest College; M.A., 1925, Ph.D., 1932, Princeton University. Instructor and Assistant Professor of Economics, Princeton University, since 1928. Contributor to economic periodicals.

[1] Social Security Act of Aug. 14, 1935, 49 Stat. 620, Tit. II, §201 (a).

[2] *Id.* §801.

[3] *Id.* §804.

[4] Report of the Senate Committee on Finance, Sen. Rep. No. 628, 74th Cong., 1st Sess. (1935) 9.

ESTIMATED GROWTH OF THE RESERVE ACCOUNT
(in millions of dollars)

Fiscal Year ending June 30	*Appropriation for reserve*	*Interest on reserve*	*Benefit payments*	*Balance in reserve*
1937	255.5	0.	1.9	253.7
1938	513.5	7.6	7.2	767.5
1939	518.5	23.0	14.5	1,299.5
1940	662.2	38.8	22.0	1,973.6
1941	807.2	59.2	29.7	2,810.3
1942	814.8	84.4	52.8	3,656.6
1943	970.0	109.8	94.2	4,642.1
1944	1,126.6	139.3	142.9	5,765.1
1945	1,137.0	173.0	191.2	6,883.9
1950	1,783.3	371.5	505.5	14,031.7
1955	1,861.2	615.8	887.8	22,115.7
1960	1,939.1	844.2	1,379.9	29,543.9
1965	2,016.9	1,040.9	1,844.0	35,898.5
1970	2,094.8	1,210.9	2,303.5	41,366.7
1975	2,172.7	1,341.8	2,872.1	45,368.3
1980	2,180.5	1,406.0	3,511.3	46,942.7

and interest by the United States."[5] These securities may be (1) ordinary obligations purchased in the open market at the market price to yield at least 3 per cent, (2) ordinary obligations purchased on original issue at par to yield at least 3 per cent, or (3) special obligations issued by the Treasury exclusively to the Reserve Account and bearing an interest rate of 3 per cent. The ordinary obligations held in the Account may be sold at the market price, but the special obligations may be redeemed only by the Treasury at par.[6]

THE NATURE OF THE ACCOUNT

The contributory taxes levied on employees and employers will, like other forms of internal revenue, flow into the general funds of the Treasury. The yearly appropriations by Congress to the Reserve Account must be invested by the Secretary of the Treasury in the manner indicated. If the Secretary purchases obligations in the open market for the Account, the amount of federal securities held by the public will be diminished. However, the total federal debt outstanding will not be reduced but merely shifted from the public to the Reserve Account. In this way, a part of the interest payments on the federal debt will be credited to the Account on the securities held therein, and such interest receipts likewise will be invested in approved obligations.

If the Secretary invests the funds of the Reserve in special obligations, as may well be the case, he will issue special 3 per cent bonds to the Account and credit to the general funds of the Treasury the cash received for the bonds. By this method of investment it is clear that proceeds from the contributory taxes will pass from the general funds of the Treasury through the Reserve Account and be returned again to the general funds. The Account, therefore, will consist of federal securities that

[5] Social Security Act, §201 (b). [6] *Id.* §201 (c).

represent the obligation of the government to pay interest and, when necessary, to liquidate a portion of the principal. Although it may be considered unusual for the assets of a reserve in the Treasury to be held in the Treasury's own securities, the underlying basis of these assets is the taxing power and credit of the federal government. Any system of social insurance presumes financial responsibility on the part of the government.

The Reserve Account is thus simply a bookkeeping device within the Treasury. Its principal purpose is to indicate the existence of a formal claim against the federal government for funds that will be devoted to the payment of old-age benefits. The existence of such an account gives a degree of permanence and contractual certainty to the program, thus tending to preclude any alterations in the contributory tax schedules or in the scale of benefits as changes occur in economic conditions or political propensities.

SIGNIFICANCE OF A RESERVE

The significance of the Reserve Account depends primarily upon the viewpoint from which it is considered. To the Treasury Department it will appear largely as an accounting and actuarial procedure, for the Account will represent a yearly record of the liability assumed by the federal government for the future payment of old-age benefits. The contributing employee will regard the Reserve as a "fund" that he has helped to accumulate, and from which he will expect benefits after he has retired. From the standpoint of the general public the principal importance of the Reserve Account lies in its effects upon taxes, current economic conditions, and standards of living. Finally, one of the most significant aspects of the Account is the effect that it will have upon the distribution of the burden of the old-age program.

In a contributory old-age insurance system the size of the reserve depends, among other factors, upon the size of benefits to be granted to workers who will retire within a few years. As their contributions will be insufficient to provide them with an adequate annuity upon retirement, the payment of a reasonable annuity will result in their receiving some "unearned" benefits. There are three general methods for meeting the heavy liability incurred if the existing older workers are to receive a decent annuity. First, a pay-as-you-go, cash-disbursement policy might be followed. In that case, the government assumes from the outset the burden of paying the unearned annuities to older workers. Consequently, smaller contributions are sufficient to provide the younger employees with benefits in later years. This was, in general, the method Great Britain adopted in 1925.

Second, the government may assume this accrued liability to the older workers, but may postpone the actual payment of this subsidy until the future, when receipts from contributions will be insufficient to meet the annual benefit payments. The program recommended to Congress by the Committee on Economic Security was based on this principle.[7] The Committee proposed that the contributory taxes on

[7] For a statement of the Committee's proposal, see COMMITTEE OF ECONOMIC SECURITY, REPORT TO THE PRESIDENT (1935) 29-34.

employees and employers begin at 1 per cent (instead of 2 per cent, as in the enacted law) and that they increase by 1 per cent each five years (instead of each three years) until 1957, when a maximum tax of 5 per cent on payrolls would be imposed. It was estimated that such a schedule of taxes would result in a maximum reserve of approximately 15 billion dollars by 1965.[8] In that year, however, the contributory taxes would not be sufficient to cover the disbursements for benefits, and governmental contributions would commence. This subsidy might be considered to represent interest on the amounts withdrawn from the Reserve Account and paid in unearned annuities to the older workers during the early years of the program. Thus, instead of commencing the federal subsidy when the first benefits are to be paid in 1942, the contributions of the younger employees and their employers would be used for that purpose. The postponed federal subsidy, begun in 1965, would increase gradually to a maximum of about a billion and a half dollars in 1980 and continue thereafter at that amount.[9]

The third method of meeting the cost of unearned annuities for the older employees is to provide a funded reserve. This was the policy adopted by Congress upon the insistence of the Secretary of the Treasury, who wanted the plan to be "self-sustaining." Under this method the federal government will bear no part of the cost of the benefits to those older workers who will retire shortly after 1942. Instead, the burden has been placed upon younger wage-earners and their employers through the imposition of contributory taxes higher than necessary to meet their own annuities. In the absence of a direct governmental subsidy a huge perpetual endowment reserve must be accumulated so that the interest on the reserve, in combination with future contributory taxes, will be sufficient to meet all benefit payments.

The belief is somewhat prevalent that the subsidy under the plan proposed by the Committee on Economic Security would be roughly equivalent to the interest charges which, under the present Act, will be paid by the government from general taxation. While from the standpoint of the general tax-payer in the distant future there is some apparent justification for this view, it should be pointed out that under the adopted plan a large amount of the federal debt may, in effect, be shifted gradually into the Old-Age Reserve Account. Thus, the interest accruing on securities in the Account will be but a continuation of the interest charges that otherwise would be payable on federal obligations in the hands of the public. After about 1965, when benefit payments to the retired aged exceed the appropriations of contributory taxes to the Account, a portion of the interest paid into the Reserve Account will be disbursed to beneficiaries, and to that extent it may be considered as an indirect subsidy at the time. However, this interest should be regarded more accurately as

[8] This estimate was based upon the additional coverage of farm labor and domestic servants. With these groups excluded, the reserve as recommended would amount to about 11½ billions.

[9] The maximum subsidy with farm labor and domestics excluded was estimated to reach approximately 1.1 billion dollars.

the payment for the former use by the government of the funds appropriated from contributory taxes to the Account. If the heavier contributory taxes were not imposed, the general tax-payer, after about 1980, when it is believed the Reserve Account will reach its maximum, would be taxed to pay the direct subsidy to the Account in addition to the interest charges on the government obligations, whether in the Account or in the hands of the public.

Distribution of the Burden

Statements are frequently encountered which intimate that the cost of the benefits can be transferred to future generations, or on the other hand that the existence of a huge reserve involves too great a burden upon future generations. In this connection there are two fundamental principles that should be emphasized. First, each generation pays the cost of supporting the aged of its time. The goods and services produced in each period sustain the population of that period, for goods and services can seldom be produced in one period and consumed in another, except through the growth of productive capital goods.[10] Second, the accumulation of a reserve in the Treasury merely determines the division of the burden between the contributory tax-payers and the general tax-payers at any one period of time. When the reserve is being amassed, purchasing power will be transferred from employees and their employers (or from consumers through higher prices) to other groups. These groups will be composed of the recipients of federal expenditures made from those funds derived from contributory taxes.[11] Later, purchasing power will be diverted to the aged beneficiaries, partly from the pockets of general tax-payers (through interest payments on the reserve) and partly from the incomes of contributory tax-payers. The amount that each of the two groups will pay at any particular time will depend largely upon the size of the Reserve Account.

SOME EFFECTS OF A LARGE RESERVE

Political Difficulties

It is unfortunate that the Act does not connect more closely the contributory taxes with the payment of old-age benefits. As a consequence, there is a possibility that political considerations may upset the adjustment between contributions and benefits. Not only would this prevent the accumulation of a reserve of this dimension, but it may preclude the establishment of any satisfactory reserve. In the first place, Congress may not continue to levy the yearly taxes according to the proposed schedules, particularly when those taxes reach the higher rate levels. Moreover, Congress will be called upon to appropriate a sum increasing from around 500 million to two billion dollars a year to a Reserve Account that will be mounting steadiy. Under such circumstances it will be difficult indeed for the Treasury to explain to Congress the need for amassing such a tremendous reserve. The existence of this large reserve might cause a reduction in the tax rates, which would be more justifiable, or might

[10] This possibility is discussed, *infra*, p. 227. [11] See *infra*, p. 227.

result in the appropriation of the contributory tax revenue to various governmental purposes without first establishing corresponding credits in the Reserve Account. The legal necessity for separating the collection of the contributory taxes and the use of such funds for old-age benefits, therefore, may lead eventually to a weakening of the insurance principle in the system.

Fiscal Problems

Should the program be carried out as projected, a number of problems will have to be faced. The resulting increase in federal revenues by 500 million to two billion dollars a year may necessitate a radical readjustment of governmental financial policies. Unless federal expenditures increase proportionately, the new contributory taxes on low-income groups will be used to retire the public debt or general taxes would need to be reduced. Despite the inequity of such a policy of debt reduction, it would improve the credit position of the Treasury. This would facilitate future borrowing, which might become necessary should a portion of the Reserve Account need to be liquidated to meet benefit payments.

If the yield on federal bonds should continue below 3 per cent, special 3 per cent obligations will have to be deposited in the Account. The excess of the guaranteed 3 per cent interest rate above the lower market rate would constitute, in effect, a subsidy to the Reserve Account. Owing to the wide demand for federal securities by various investment groups, it is highly probable that a gradual retirement of the federal debt would cause prices of government bonds to rise to a considerable premium. On the other hand, if market interest rates should increase so that the yield on government bonds exceeds 3 per cent, the Secretary of the Treasury might purchase federal bonds in the market for the Reserve Account in order to sustain government credit. However, it is more likely that he would issue special 3 per cent obligations to the Account, and if possible retire outstanding high-yield bonds with the funds received in return therefor, so as to preclude larger appropriations for interest charges. In any event, the credit of the government will not be subjected so frequently nor so fully to the test of the open market. This may produce an unwholesome effect upon federal financial policies. It is doubtful whether the operation of such a large reserve can be absorbed into the normal administration of the Treasury without serious disturbance.[12]

[12] These difficulties may be accentuated somewhat by the existence and supervision of the Unemployment Trust Fund established under Title IX, §904, of the Social Security Act. Although the Trust Fund differs from the Reserve Account in being held in the form of a trust by the Secretary of the Treasury, nevertheless the provisions for investing and liquidating the Fund are almost identical with those of the Account. However, even in prosperous periods it is probable that the Trust Fund will never exceed three billion dollars. The yearly receipts into the Fund will be much smaller than the appropriations to the Old-Age Reserve Account, and should not create any serious additional problems for the Treasury. In the future, however, a period of business depression may necessitate the liquidation of a portion of the Reserve Account at the same time that a heavy drain upon Unemployment Trust Fund will require the disposal of large quantities of its securities, which are also government obligations. This might result in a serious decline in the market price of federal bonds, but it is more likely that the Treasury would collaborate with the Federal Reserve authorities to prevent such a consequence. In all probability the existence of these two

Capital Accumulation

A more theoretical problem, but one which may have serious economic consequences, is the effect that the accumulation of a huge reserve will have upon the relationship between consumer spending and investments in capital goods. If the program continues in operation as projected, the appropriations to the Reserve Account from the contributory taxes and from general taxation (as interest on the reserve) will come principally from purchasing power that otherwise would be spent for consumers' goods.

The way in which the government disposes of these funds will determine the ultimate effect upon savings. In addition to the payment of relatively small benefits during the early decades, there are three general purposes to which the Treasury might devote the proceeds: (1) to retire the federal debt, (2) to defray the ordinary current expenses of the government, or (3) to meet extraordinary expenses and prevent the budget from becoming unbalanced. The effects of these applications of the revenue are, respectively, to divert purchasing power directly to investors, to reduce general taxes, or to make unnecessary an increase in taxes. Therefore, federal disbursements of the new contributory tax receipts will either increase investments in capital goods or prevent their reduction. It can be concluded that, in the years during which the Reserve Account is being accumulated, there will be a net diversion of national income from spending for consumers' goods to investment in producers' goods.

After about 1980 the disbursements to beneficiaries will absorb the entire sum entering the Account from annual appropriations and from interest on obligations held in the Account. Consequently, there will be no transfer of national income from consumer spending to investment; rather there may be some diversion of income from tax-payers who might otherwise save the funds to the beneficiaries who undoubtedly will spend them for consumers' goods.

National Productivity

In the future the standard of living of the aged groups unquestionably will be much higher than it is at present, and, moreover, they will constitute a much larger proportion of the population than now. Either this will reduce the standard of living of the remainder of the population or the productivity of the country must increase sufficiently to compensate for the difference. The latter will result only if there is continued technological progress, if the capital equipment of the country is increased, or if labor efficiency is stimulated, so that per capita production is expanded.

There is every indication that technical improvements will continue, with or without a social security program. Furthermore, the existence of a greater degree

governmental funds will necessitate a degree of coöperation between the Treasury and the Board of Governors of the Federal Reserve System that may have an important bearing upon the control of commercial bank credit.

of economic security for the wage-earners of the country should be expected to lessen the fears and anxieties that result from the prospect of dependence and poverty in old age. By affording a guaranteed protection against this hazard of industrial employment, the old-age insurance system should prove to be an important factor in stimulating the productive efficiency of our industrial workers. The impetus given by old-age insurance to the retirement of superannuated employees will have a similar effect, partly through accelerating the promotion of younger employees.

The extent to which a large Reserve Account will contribute to the expansion of the capital equipment of the country depends principally upon (a) how private business profits are affected and (b) how the federal government spends its money. There appear to be at least three ways in which business profits may be affected. First, the excise tax on payrolls may somewhat reduce immediate profits, though in the long run the tax will probably be shifted either forward to consumers or backward to the employees. Thus it would have little effect ultimately on profits and production. Second, the reduction in consumer spending may tend to have a depressing effect upon business profits in the consumer-goods industries in the near future. In the third place, a decline in interest rates resulting from increased saving should reduce costs of production, improve profit possibilities, and thus stimulate borrowing and an expansion of capital equipment.[13] The eventual result would be more capital per worker and presumably an increase in future production, brought about by the investment of enforced contributions for future annuities on the part of present low-income groups.

The expenditure of the contributory taxes by the government may also affect the future productivity of the country. If the Treasury utilizes the new revenue to retire the outstanding public debt, the funds will be transferred to former owners of federal securities, who presumably will re-invest the proceeds in productive enterprise. As a large portion of the federal debt is held by banks, to the extent that they reduce their holdings of government securities their cash reserves will be increased and they, likewise, will probably substitute in their portfolios other investments in productive enterprise. If, on the other hand, the Treasury uses the new revenue to meet other governmental expenses, the effect on national productivity will depend on the purposes to which these funds are appropriated. The funds may be spent (1) for consumptive purposes, such as government salaries, unemployment relief or old-age assistance,[14] (2) for non-productive capital goods, such as battleships or munitions, (3) for productive capital goods such as public works, highways, and flood control. This third type of expenditure probably will increase national pro-

[13] With lower interest rates and higher labor costs there will be some stimulus to the introduction of labor-saving machinery and a pressure on employers to reduce wages (and thus shift the pay-roll tax back to the employees).

[14] The appropriation of funds by Congress to the states for old-age assistance under Title I of the Social Security Act should not be confused with appropriations to the Reserve Account for old-age benefits. It should be clearly understood that the funds appropriated to the Account, after being exchanged for special Treasury obligations issued to the account, revert to the general funds of the Treasury and can then be

ductivity and widen the tax base. Both (2) and (3) will stimulate production in capital goods industries, whereas the first type of expenditure will merely compensate for the consumer spending contracted previously as a result of the contributory taxes.

Numerous adjustments to a changing price structure will be necessary, and difficulties probably will be experienced by some employers and employees. The higher the contributory tax rates, and consequently the larger the Reserve, the less easily can the necessary adjustments be effected. However, business profits probably will not be unduly depressed, particularly if the inauguration of the program coincides with a period of generally prosperous business conditions. Once the Reserve Account is fully established and business has become adapted to the new conditions, the flow of considerable purchasing power from the several contributing groups to the retired beneficiaries should be maintained fairly easily. In fact, as the latter group will spend practically all of their income for consumers' goods, a stabilizing influence will be exerted that will serve as a cushion to prevent extreme declines in prices and production. This would be particularly effective if some of the purchasing power were derived, through the liquidation of securities in the Account, from funds that otherwise would have been saved but not invested—a situation that usually exists during periods of depression.

DESIRABILITY OF A RESERVE

In considering whether an old-age insurance reserve is desirable and necessary, a distinction should be drawn between a large funded reserve, such as that provided by the Act, and a small reserve sufficient merely to meet unpredictable contingencies. A large funded reserve is neither necessary nor desirable, whereas a small contingency reserve is essential.

As already indicated, a large funded reserve may (1) cause an unfair distribution of the burden between contributory tax-payers and general tax-payers, (2) complicate the fiscal policies of the Treasury, (3) create economic maladjustments between saving and spending, and (4) probably lead to political interference with the relationship between contributory taxes and old-age benefits. In addition, such a large reserve is not necessary to achieve the objectives for which it is to be created. One of the primary purposes of a reserve is to secure an equitable distribution of the burden of the system by requiring participants to contribute toward the benefits they will receive when the retirement age is reached. Despite the fact that the accumulation of a fully-funded reserve based on sound actuarial principles is essential in private old-age annuity plans, such is not the case in social old-age insurance. The basis of a social program is the taxing power of the government, and there is no necessity for creating a perpetual endowment in order to divide, during any period, the

used for any authorized purpose, including grants for old-age assistance. If, however, such grants are made from the general funds, and appropriations corresponding to contributory taxes are not credited to the Reserve Account, a great injustice would be done to the contributing employees for, in effect, they, rather than more able, higher-income tax-payers, would be financing the federal old-age assistance program.

burden of the system between the contributory tax-payers and the general tax-payers. Governmental contributions from general tax revenues can as well be made directly to the Reserve Account as indirectly through appropriations for interest on federal bonds held in the Account.

A second purpose of a reserve is to represent on the books of the Treasury the true fiscal position of the government with respect to the liability it has assumed under the Act. But to levy high contributory taxes and to accumulate such a huge reserve merely to accomplish this accounting objective seems altogether unnecessary.

In the third place, an essential purpose of a reserve is to enable the system to meet various eventualities that may arise. But a huge reserve is not necessary to accomplish this end. However, because of the possibility of such future exigencies, it is extremely desirable that a relatively small contingency reserve of from five to fifteen billion dollars be accumulated. During periods of business depression receipts from both contributory taxes and general taxes would decline. As benefit payments would continue undiminished, heavier taxes would be necessary if no reserve existed. In such a situation, some of the securities held in a reserve could be sold in the open market to investors who are usually in search of safe investments during such periods. In addition, a small contingency reserve is advisable in order to meet unexpected or unpredictable demands upon the system. Some factors which might cause an unexpected drain are: errors in the estimates of population trends, changes in mortality rates, a possible lowering of the retirement age, shifts in and out of covered employment, and variations in labor conditions and wage rates, such as a falling wage level over a long period.

Furthermore, the possibility of political interference would be lessened by the absence of a large reserve and by the lower schedule of contributory taxes. This would also give the contributors more assurance that the relationship between their contributions and their benefits would not be disturbed. Moreover, the Treasury could manage a small reserve without being forced to distort its normal tax and credit policies. Finally, because of the federal subsidy that would be necessary, a smaller reserve and lower contributory tax rates would cause a more equitable distribution of the burden involved in paying unearned benefits to eligible workers soon to retire. It would seem, therefore, to be the part of wisdom to amend Title VIII of the Act by lowering the contributory tax rates before a large reserve has been accumulated. Otherwise, an indispensable piece of social legislation may encounter difficulties that will seriously impair its operation.

COMPANY ANNUITY PLANS AND FEDERAL OLD-AGE INSURANCE

M. B. Folsom*

Old-Age Assistance

Strong arguments can be made for providing pensions in a systematic way to aged persons who have no means of subsistence. Almost everyone is agreed that the old-age assistance plans which have been adopted by over thirty states are a more humane method of taking care of the indigent aged than the poor-house system, and also more economical. It would be a serious mistake, however, if we in this country depended only upon this method of government old-age assistance for taking care of the old-age problem.

The Social Security Act provides that the federal government will pay half of the cost of the state old-age assistance plans, with a maximum contribution by the federal government of $15 per month. It is estimated by the actuaries that this plan for old-age assistance will in 1965 cost the federal government $1,250,000,000 and the state governments a like amount. We are going to have a much larger number of older people in the future than we now have and it has also been found in other countries that with a plan of this type in operation a large proportion of the aged will be on public assistance. It is bad in principle to have a system under which we tell those who do not save that they will be provided for by the state but those who have saved for their old age will receive nothing and will be taxed to provide pensions for the others.

To avoid these results it is necessary that a governmental contributory annuity plan be established under which employees and employers would begin gradually building up a fund which could provide annuities in their old age without their being dependent upon the government for support. It would, of course, be better if annuity plans could be adopted on a wide enough scale by individual companies so that it would not be necessary for the government to enter into this field, but for a number of reasons this could not be expected.

* A.B., 1912, University of Georgia; M.B.A., 1914, Harvard Graduate School of Business Administration. Treasurer, Eastman Kodak Company. Member of Advisory Council to Committee on Economic Security, 1934-1935. (This article is based upon a paper presented to the Industrial Relations Conference of the American Management Association held in Chicago, Ill., February 6, 1936.)

Federal Old-Age Benefit Plan

Under the old-age benefit plan set up by the Social Security Act, the employers and employees will each contribute 1% for the three years beginning January 1, 1937; the rate is increased to 1½% for each in 1940 and continues to increase at three-year intervals until a maximum of 3% for each is reached. With these rates of contribution and the benefits provided under the plan, a tremendous reserve would be built up amounting by 1980 to over 45 billion dollars. Practically all the actuaries and other students of the subject are agreed that it is impractical and unsound to attempt to set up a governmental annuity plan on this basis and that it is much better for a number of reasons to have a plan on a pay-as-you-go basis.[1]

The dangers inherent in the present plan will not arise for a few years but it is very important that these dangers are realized so that the system can be changed in the meantime. The plan could easily be changed by having the rates of contribution increased at intervals of five or six years instead of three years as now provided, and also by fixing the maximum rate at 2½% instead of 3%. By postponing the increases in the contribution rates, the amount of the reserve will be reduced considerably and it would not become larger than is necessary for contingencies. During the next three years there should be sufficient opportunity to convince the Social Security Board and Congress of the desirability of this change.

Adjustment of Company Annuity Plans

Companies which have had sound, adequate pension plans for a number of years have found that it is good business to have such plans. They have been enabled to retire workers after they have passed their period of usefulness and replace them by more efficient workers.

The Federal Act should be of assistance to the companies which have not yet established pension plans because the benefits which will be paid to the present older workers are greater than could be obtained with the same contribution paid to an insurance company. Thus the government plan assists the companies in meeting the accrued liability. The companies which already have adequate pension plans will find that the cost in the future will not be any greater than in the past. Those with plans which are not adequate will find that this is an opportunity to put their plans on a sound basis.

The government plan, however, is intended more to meet the social problem and not the industrial pension problem. Employers therefore cannot assume that the government plan is going to solve their pension problem. In the first place, no annuities will be paid under the federal plan until 1942 and for several years after that the workers who retire will not receive very large pensions. For instance, the person receiving a salary of $100 a month who retires in 1942 will receive a pension of $17.50 a month, and one who retires in 1947, $22.50 a month. The person who has

[1] For a description of this reserve and a criticism of its economic effects, see Modlin, *The Old-Age Reserve Account and its Economic Implications*, *supra*, p. 221.

average earnings of $200 a month will receive $22.50 upon reaching 65 and retiring in 1942 and $32.50 if retired in 1947.

Many companies will therefore find it necessary to supplement these annuities. The extent to which it is necessary to supplement the federal plan depends to a large extent upon the ages and wages of the personnel. If the employees of a company are for the great part young and in the lower wage groups, the government plan will go a long way toward meeting the pension problem because by the time these younger men reach retirement age the benefits payable under the government plan might be sufficient. The pensions are weighted so that the employees in the lower wage groups receive considerably higher benefits in proportion to their contributions than those in the higher wage groups. On the other hand, if a company has many older employees or employees in the upper wage groups and in the salary group over $3,000, the government plan will not meet that company's pension problem, and it would be necessary to provide a supplementary plan.

It should be clearly understood that a governmental plan should always provide only minimum benefits.

(a) Adjustment to Foreign Governmental Plans

The Eastman Kodak Company covers employees under pension plans in several foreign countries in which there is a governmental plan. The methods we have adopted depend upon the type of governmental plan. For instance, in England when we inaugurated our annuity plan we disregarded the governmental plan entirely because the benefits were so low. On the other hand, in some of the South American countries, such as Brazil and Uruguay, the governmental plans were so drastic and required such a large contribution from the workers and employers that it was necessary for us to abandon the pension plans which we had had in operation for several years.

In France the governmental plan is more nearly comparable to the plan set up under the Social Security Act and our experience there is of interest in considering the adjustments to be made in the company plans in this country.

In France we have operated our pension plan as a supplement to the governmental plan for several years and it has worked out quite satisfactorily. Under the governmental plan employees who earn less than 25,000 francs, or about $1,600, are eligible. A basic wage is set up which is an annual wage of a maximum of 10,800 francs, or $720. Both the employee and employer contribute 4½% of the basic wages. The normal retirement age is 60. Because the annuities to be paid for a number of years were not very large and because many workers were not covered at all, we found it necessary to supplement this plan. Otherwise our pension program would not have been adequate and we would not have been able to retire all types of workers after they had passed their period of usefulness.

We had previously had a plan in operation which provided an annuity of 1% of

salary for each year of past service and 2% for each year of future service. When the governmental plan became effective we changed our plan so that the employee would receive from the insurance company which had underwritten our plan an annuity of 2% of his salary, less a specified percentage of the basic salary as defined by the law. The result was that our total payments to the insurance company and the government were practically the same as they had been before. The employee's contribution to our plan was also reduced by a formula which resulted in his total contributions being about the same as they had been previously.

(b) Adjustment to the Social Security Act

We have decided to adopt the same policy in this country. Our retirement annuity plan was underwritten by the Metropolitan Life Insurance Company with whom we took out a group contract in 1929. In addition to making a substantial payment for the accrued liability at the inauguration of the plan, we have been making payments to them each year for the current liability. The payments which are being made currently to the insurance company are in excess of the initial payments which we shall have to make under the pension provisions of the Social Security Act. This excess is due to the fact that the benefits payable under our plan are higher than the benefits which will be paid under the Social Security Act for a number of years, and also because the Social Security plan is limited to the first $3,000 salary. When the full 3% rate becomes effective under the government plan, the difference between our present rates on the first $3,000 salary and the government rates will not be so great.

The modifications which we shall make in our plan on January 1, 1937, due to the enactment of the Social Security Act, will have no effect upon money which we have already paid to the insurance company or upon the annuities which have already been earned by employees for service prior to January 1, 1937. Thereafter the annual payments to the insurance company will be reduced because of the old-age annuity tax payments the company will make to the federal government. The objective will be to have the sum of the annuities provided by the company's payments to the government and to the insurance company provide a combined annuity practically the same as under the present company annuity plan. The total cost to us in the long run will be approximately the same as it would have been under our present plan. During the first few years the combined cost will be somewhat lower because the benefits payable to those who retire in the next few years will be greater than could be purchased for the same payments to the insurance company. This advantage is later offset by the higher cost of the benefits purchased fifteen or twenty years from now.

Our retirement annuity plan is somewhat different from the ordinary pension system in that we arranged to finance to a large extent the current cost by reducing the wage dividend which we had been paying to employees for several years.

We shall therefore arrange our plan so that the part of the annuity which the present employee will accumulate in the government from his own contributions will be added to the annuity which he would have accumulated under our own plan. The new employee, however, will accumulate a combined annuity of 2% for each year of service, with the employee paying part of the cost as provided under the Social Security Act and us paying the balance. We feel that for new employees a 2% annuity is adequate—the older employees of our present force received only 1% annuity for their service prior to 1929.

We have not yet worked out the exact formula that we shall use in making the necessary adjustments in our plan when the government plan becomes effective. The federal plan provides in effect a benefit of 1% of salary for the first $45,000 of total salary received and ½% for salary in excess of $45,000, plus a flat addition of $150 a year. Our plan provides for 1% of salary prior to 1929 and 2% thereafter. As indicated above, our formula for the present employees would be different than it would be for the new employees or for companies which already have a contributory plan in effect.

The method we shall probably use for new employees is to have our plan provide benefits equal to 1% of the annual salary of workers earning less than $3,000, and for those receiving over $3,000, 1% of the annual salary up to $3,000 and 2% of the salary in excess of $3,000. This plan would result in a combined annuity from the insurance company and from the government of 2% of salary for each year's service, and the employee would contribute toward the cost to the extent of his payments to the federal government.

Adjustments will have to be made for women under our plan which provides for their retirement at 60 instead of 65 as under the federal plan. An arrangement can probably be worked out for temporary annuities running from 60 to 65.

From our experience in several foreign countries, we are convinced that it is feasible to operate a company annuity plan as a supplement to the governmental plan, and we are therefore not concerned about the effects of the federal annuity plan on our own plan.

OLD-AGE ASSISTANCE

Marietta Stevenson*

Old-age assistance legislation has been popular in the states in recent years and the plan for federal grants-in-aid for the purpose included in the Social Security Act has met with quite general public approval. Federal participation first became probable in June, 1934, when President Roosevelt sent a special message to Congress declaring:

"Next winter we may well undertake the great task of furthering the security of the citizen and his family through social insurance.

"This is not an untried experiment. Lessons of experience are available from states, from industries and from many nations of the civilized world. The various types of social insurance are interrelated; and I think it is difficult to attempt to solve them piecemeal. Hence, I am looking for a sound means which I can recommend to provide at once security against several of the great disturbing factors in life—especially those which relate to unemployment and old age. I believe there should be a maximum of coöperation between states and the federal government. I believe that the funds necessary to provide this insurance should be raised by contribution rather than by an increase in general taxation. Above all, I am convinced that social insurance should be national in scope, although the several states should meet at least a large portion of the cost of management, leaving to the federal government the responsibility of investing, maintaining and safeguarding the funds constituting the necessary insurance reserves.

"I have commenced to make, with the greatest care, the necessary actuarial and other studies for the formulation of plans for the consideration of the Seventy-fourth Congress."

Almost immediately the President created the President's Committee on Economic Security, consisting of the Secretary of Labor, the Secretary of Agriculture, the Secretary of the Treasury, the Attorney General, and the Federal Emergency Relief Administrator. Associated with the Committee was an advisory council of some twenty outstanding national leaders in social welfare and related fields. The work of developing a legislative program for recommendation to Congress was shared in by a technical board, special committees, and a technical staff. This Committee reported to the President on January 15, 1935.

In recommending legislation to meet the problem of security for the aged, the

* M.A., 1920, Ph.D., 1926, University of Chicago. Assistant Director, American Public Welfare Association, since 1931. Children's Bureau, United States Department of Labor, 1927-1931.

Legislative activity in this field has been such that it has not been practicable to report developments in the period intervening between the completion of this article early in March and the date of publication.

Committee outlined as complementary measures non-contributory old-age pensions, compulsory contributory annuities, and voluntary contributory annuities, all to be applicable on retirement at the age of 65 years or over. The Committee reported:[1]

"In 1930 there were 6,500,000 people over 65 years of age in this country, representing 5.4 percent of the entire population. This percentage has been increasing quite rapidly since the turn of the century and is expected to continue to increase for several decades. It is predicted, on the basis of the present population and trends, that by 1940, 6.3 percent of the population will be 65 years of age; by 1960, 9.3 percent; and by 1975, 10 percent. In 25 to 30 years the actual number of old people will have doubled, and this estimate does not take into account the possibility of a decrease in the mortality rate, which would further increase the total.

"No even reasonably complete data are available regarding the means of support of aged persons, and the number in receipt of some form of public charity is not definitely known. The last almshouse survey was made more than 10 years ago, and the number of people in institutions of this kind can only be approximated. There are about 700,000 people over 65 years of age on F.E.R.A. relief lists, and the present cost of the relief extended to these people has been roughly estimated at $45,000,000 per year. In addition there are a not definitely known but large number of old people in receipt of relief who are not on F.E.R.A. relief lists. All told, the number of old people now in receipt of public charity is probably in excess of 1,000,000.

"The number of receipt of some form of pension is much smaller. Approximately 180,000 old people, most of them over 70 years of age, are receiving pensions under the State old-age assistance laws, the average pension last year being $19.74 per month.

"A somewhat smaller number of the aged are receiving public retirement or veterans' pensions, for which the expenditures exceed those under the general old-age assistance laws. Approximately 150,000 aged people are in receipt of industrial and trade-union pensions, the cost of which exceeds $100,000,000 per year.

"The number of the aged without means of self-support is much larger than the number receiving pensions or public assistance in any form. Upon this point the available data are confined to surveys made in a few States, most of them quite a few years ago. Connecticut (1932) and New York (1929) found that nearly 50 percent of their aged population (65 years of age and over) had an income of less than $25 per month; 34 percent in Connecticut had no income whatsoever. At this time a conservative estimate is that at least one-half of the approximately 7,500,000 people over 65 years now living are dependent.

"Children, friends, and relatives have borne and still carry the major cost of supporting the aged. Several of the States surveys have disclosed that from 30 percent to 50 percent of the people over 65 years of age were being supported in this way. During the present depression, this burden has become unbearable for many of the children, with the result that the number of old people dependent upon public or private charity has greatly increased.

"The depression will inevitably increase the old-age problem of the next decades. Many children who previously supported their parents have been compelled to cease doing so, and the great majority will probably never resume this load. The depression has largely wiped out wage earners' savings and has deprived millions of workers past middle life of their jobs, with but uncertain prospects of ever again returning to steady employment. For years there has been some tendency toward a decrease in the percentage of old

[1] COMMITTEE ON ECONOMIC SECURITY, REPORT TO THE PRESIDENT (1935) 23.

people gainfully employed. Employment difficulties for middle-aged and older workers have been increasing, and there is little possibility that there will be a reversal of this trend in the near future."

The report also discussed the status of state legislation for old-age assistance (pensions) legislation at that time and the proposal for federal grants-in-aid to stimulate state activities in this field.[2]

In a very important message to Congress on January 16, 1935, the President submitted the report of his Committee on Economic Security. He urged quick federal action so that state legislatures then in session would also take necessary action. Immediately Senator Wagner and Congressman Lewis introduced bills covering the administration program, including provision for old-age assistance.[3] House and Senate committees were geared for action. Extensive hearings were held with many experts and interested individuals testifying on the different provisions. Much time was devoted to discussion of the need for old-age assistance. When finally introduced in the House in modified form, after three months of discussion, the voluntary old-age security insurance system had been deleted and some of the requirements that states measure up to federal standards for old-age assistance (and other assistance functions) had been modified. Other modifications and compromises were necessary in conference committee after the bills passed the House and Senate in somewhat different forms. In process of passage the old-age assistance section lost the provision requiring that in order to qualify for federal aid, any state's grants must be sufficient for an acceptable standard of health and decency, and even more serious was the loss of federal control over standards of personnel for administration. The provision for standards of adequacy might have resulted in increasing the grants given, and some control over personnel would certainly have improved the state and local administration of the Act.

THE OLD-AGE ASSISTANCE PROVISIONS OF THE FEDERAL ACT

As enacted, the Federal Social Security Act in Title I, Section 2, states definite requirements that must be met by states in order to be eligible for federal grants for old-age assistance expenditures. The Act requires that such a state plan must

"(1) provide that it shall be in effect in all political subdivisions of the State, and if administered by them, be mandatory upon them;
(2) provide for financial participation by the State;
(3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;
(4) provide for granting to any individual, whose claim for old-age assistance is denied, an opportunity for a fair hearing before such State agency;
(5) provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be necessary for the efficient operation of the plan;

[2] *Id.* at 26.

[3] S. 1130, H. R. 4120, 74th Cong., 1st Sess. (1935).

(6) provide that the State agency will make such reports, in such form and containing such information as the Board may from time to time require, and comply with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports; and

(7) provide that, if the State or any of its political subdivisions collects from the estate of any recipient of old-age assistance any amount with respect to old-age assistance furnished him under the plan, one-half of the net amount so collected shall be promptly paid to the United States."

In addition, Section 2 also provides that the Social Security Board, created by the Act, shall approve any plan which fulfills the conditions specified except that it shall not approve any plan which imposes, as a condition of eligibility for old-age assistance under the plan,

"(1) An age requirement of more than sixty-five years, except that the plan may impose, effective until January 1, 1940, an age requirement of as much as seventy years; or

(2) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for old-age assistance and has resided therein continuously for one year immediately preceding the application; or

(3) Any citizenship requirement which excludes any citizen of the United States."

When a state provides old-age assistance, the Social Security Act provides that the federal government will pay one-half of the cost up to $30 a month for any individual. The state may pay more, but the federal government will still pay only $15. These requirements, which are generally in line with the trends that had taken place in state legislation previously, have in turn been largely responsible for state legislative activity in this field during 1935.

State Old-Age Assistance Legislation

In the decade just previous to 1933, eighteen states had enacted old-age assistance (pension) laws; eleven were passed during 1933 and 1934, with even greater activity manifested during 1935 and the early months of 1936. The statutes show considerable variation, but even greater variation has developed in administration. Most of these laws specified that pensions would be available to the needy aged who had reached the required age of 65 or 70, had lived within the state for a long period of years, and had neither relatives legally responsible for their support nor a substantial income or property of their own. A maximum benefit of $1 a day was common, although the actual amounts granted were considerably less in most cases. Poor administrative machinery and inadequate financing have been even more responsible for the inadequate meeting of needs than the defects in the laws themselves.

Of the states operating old-age pension laws in 1934, statistics show that only seven, California, Colorado, Indiana, Massachusetts, New Jersey, New York, and Ohio, had sizable programs with more than 10,000 pensioners and costing over a million dollars. The average pension granted in these states shows as wide variation as is found in the whole United States, as shown in the following table:

TABLE I

Operation Under State Old-Age Pension Acts During 1934

State	*Funds supplied by*	*Number of Eligible Age*	*Number of Pensioners (end of 1934)*	*Amount Disbursed*	*Monthly Pension*	
					Maximum Payable	*Average Paid 1934*
Arizona	State and county	9,118	1,820	$ 427,527	$ 30.00	$ 19.57
California	State and county	210,379	19,619	4,288,508	30.00	20.21
Colorado	State and county	61,787	10,098	1,256,190	30.00	9.74
Delaware	State	16,678	1,583	193,231	25.00	9.91
Idaho	County	22,310	1,712	138,440	25.00	6.74
Indiana	State and county	138,426	23,533	1,134,250	15.00	4.50
Iowa	State	184,239	8,300	220,000	25.00	13.25
Kentucky	County	84,252	....	....	20.83	....
Maine	State and city	69,010	....	....	30.00	....
Maryland	County	92,972	267	65,228	30.00	24.43
Massachusetts	State and city	156,590	21,473	5,628,492	(1)	26.08
Michigan	State	148,853	3,557	103,180	30.00	9.99
Minnesota	County	94,401	4,425	577,635	30.00	10.97
Montana	County	14,377	2,780	177,426	25.00	5.32
Nebraska	County	86,194	926	13,577	20.00	1.22
Nevada	County	4,814	7	1,552	30.00	18.48
New Hampshire	County	25,714	1,483	311,829	32.50	17.51
New Jersey	State and county	112,594	11,401	1,773,320	30.00	14.87
New York	State and county	373,878	51,834	12,650,828	(1)	20.65
North Dakota	State	30,280	3,914	24,259	12.50	.69
Ohio	State	414,836	36,543	1,434,416	25.00	6.54
Oregon	County	39,133	6,525	639,296	30.00	8.16
Pennsylvania	State	289,705	18,261	386,717	30.00	21.18
Utah	County	22,665	902	86,416	25.00	7.98
Washington	County	101,503	1,588	103,408	30.00	5.43
West Virginia	County	73,043	....	....	30.00	....
Wisconsin	State and county	112,112	2,127	459,146	30.00	19.95
Wyoming	County	8,707	719	82,732	30.00	9.59
Total	....	2,998,570	235,397	32,177,603	....	14.68
Alaska	Territory	2,935	454	108,485	35.00	25.00
Hawaii	County	7,638	354	27,427	15.00	7.06
Grand Total	....	3,009,143	236,205	32,313,515	....	14.69

[1] No limit.

Source: U. S. Bureau of Labor Statistics; Committee on Economic Security; Monthly Labor Review (August, 1935).

Previous to federal discussion and action, certain trends toward more effective state laws and administration were discernible. The first old-age assistance laws left the adoption of the system optional with local authorities, but these were gradually replaced by mandatory state-wide systems because, where the law was left optional, it was usually in effect in only a few counties. This argued strongly for the necessity of a state-wide mandatory system and hastened the change. Another definite trend was toward state financial aid in increasing proportions. In 1928 there were six states with old-age assistance laws, but only Wisconsin provided for state aid, while by the end of 1930, four of the twelve states with old-age assistance laws provided aid from the state. This participation increased until, by the end of 1934, with twenty-eight states having laws, half provided for state payments, several assuming entire state responsibility for financing. The more effective laws have provided

for state-wide local administration with good state supervision and state participation in financing. Recognition of this experience is incorporated in the Federal Act in the stated requirements for acceptance of state plans.

During 1935 twelve states enacted new old-age assistance laws, two of these replacing old laws previously declared unconstitutional, and sixteen other states amended earlier statutes to fit the requirements of the federal act. According to the Social Security Board, forty-one states, two territories, and the District of Columbia now have legislation or general enabling acts under which state plans may be submitted.

In the table on pages 242-243, the present status and principal provisions of old-age assistance legislation are summarized.[4] Some of the other requirements customarily included in such legislation call for some discussion.

In conformity with the conditions imposed by the Federal Act, new state statutes are requiring that the recipient of old-age assistance is not an inmate of or being maintained by any municipal, state, national, or private institution at the time of receiving assistance. Another common requirement is that a recipient has not made an assignment or transfer of property so as to render himself eligible for assistance.

The newer laws are less apt to set up property limitations specifying the maximum of income or assets which may be received or owned by recipients of assistance. Instead, the state is protected from being imposed upon by other provisions requiring that the "aged person is in need" and that the recipient "may be required to transfer property to the county" under certain conditions, and providing for recovery "from the recipient in case he becomes possessed of property or income" and "from the estate that a recipient may leave." These newer provisions leave more discrimination to the administrative agency as well as accomplish the real purpose of protecting the government from giving assistance to those who are not in need.

The older provisions setting up moral qualifications for eligibility and those requiring relatives to support the aged are gradually being eliminated.

A number of state statutes have not as yet provided for the hearing, required by the Federal Act, before the state agency of claims of applicants aggrieved by rulings by the local administrative body, although in some of these statutes provision is made for direct appeal to the courts. In some of the state acts making provision for appeal to the state agency, there is included the commendable provision that the state agency may review claims on its own motion.

The majority of the states have made direct appropriations for financing the state cost of old-age assistance, but some states plan to pay the costs through imposition of special taxes. The sales tax is so used in Arkansas; the poll tax in Connecticut, Iowa, Nebraska, and Vermont; the motor fuel tax in Nebraska; the inheritance tax

[4] A plan for New Mexico, developed by the New Mexico Relief and Security Authority (N. M. Laws 1935, c. 86) has been accepted by the Social Security Board. The Oklahoma old-age assistance was declared unconstitutional by the State Supreme Court on Feb. 18, 1936. Alaska and Hawaii have adopted acts but their plans have not as yet been accepted. See Alaska Comp. Stat. (1933) §§1781-1786, am'd, Laws 1935, c. 47; Hawaii Laws 1933, Act. No. 208, am'd, Laws 1933 (Spec. Sess.) Art. 39.

TABLE II
State Old-Age Assistance Laws

State	Age	Maximum Monthly Pension	Citizenship (or Years Residence)	Years Residence in State	Years Residence in County	Maximum Income or Assets	Source of Funds	Administration
*ALABAMA Laws '35, c. 448	65	$30[1]	U. S.	5 in last 9[2]	1	$360	½ state ½ county	State Dept. Pub. Welf.; Co. Depts. Pub. Welf.
ARIZONA Acts '33, c. 34	70	$30	U. S.	35		$300	⅔ state ⅓ county	Co. Old Age Pens. Commn.
ARKANSAS Acts '35, nos. 321, 322	70[3]	$30		5		$300 homest'd $2500	state and county	State Dept. Pub. Welf.; Co. Pub. Welf. Bds.
CALIFORNIA Gen. Laws, Act 5846, am'd, Laws '35, c. 633	65	$35	U. S.	5 in last 9[2]	1	realty $3000; pers. $500	½ state ½ county or city & county	State Dept. Soc. Welf.; Co. Bds. Supvsrs.
COLORADO Acts '33, cs. 144, 145, am'd, Acts '35, H.B. 810	65	$1 (day)	15	15	1	$1 (day) assets $2500	state	State Relief Comm.; Co. Commrs.
*CONNECTICUT Acts '35, H.B. 1233	65	$7 (week)	U. S.	5 in last 9			state	Commr. Welf.
*DELAWARE Acts '31, c. 85	65	$25	15	5			state	State Old Age Welf. Commn.
†FLORIDA Acts '35, S.B. 606	65	$35[4]	U. S.	5 in last 9	1	$400	state[5]	State Bd. Pens.; Bd. Co. Commrs.
*IDAHO Code ('32) §§ 30-3101 to 30-3125	65	$25	15	10	3	$300	county	Co. Old Age Pens. Commn.
ILLINOIS Laws '35, H.B. 940, am'd, Laws (Sp. S.) 1935, H.B. 1	65	$30	U. S.	5 in last 9			state	Co. Depts.
INDIANA Acts '33, c. 36	70	$15	15	15	15	assets $1000	½ state ½ county	Bd. Co. Commrs.
*IOWA Code ('35) §§ 5296-f1 to f40	65	$25	U. S.	5 in last 9		$300 assets $2000[6]	state	State Old Age Ass'ce Commn.; Co. Old Age Ass'ce Bd.
KENTUCKY Acts '36, H.B. 427	65	$15	U. S.	5 in last 9			state	State Dept. Pub. Welf.
*MAINE Acts '33, c. 267	65	$1 (day)	U. S.	15	1	assets $300	½ state ½ city or town	State Dept. Health and Welf.; local old-age pens. bds.
*MARYLAND Acts '35, c. 592, am'd, c. 586	65	$1 (day)	15	5 in last 10	1		⅔ state ⅓ county	Bd. State Aid and Charities; co. welf. bds.; Balt. Dept. Welf.
MASSACHUSETTS Ann. Laws ('33) c. 118A, ('35 Supp.) c. 118A, c. 69, § 29	70	no limit	U. S.	5 in last 9			⅓ state ⅔ county	State Dept. Pub. Welf.; co. or city bds. pub. welf.
*MICHIGAN Acts '35, No. 159	70[3]	$30	U. S.	5 in last 9		assets $3500	state	State Welf. Dept.; co. old age ass'ce bds.
MINNESOTA Laws '36 (Sp. S.) H.B. 264	65	$30	U. S.	5 in last 9		assets $3500	state and county	State Bd. Control; Co. Welf. Depts. or Bds. Commrs.
*MISSISSIPPI Laws '35 (Sp. S.) S. B. 2	65	no limit[7]		5 in last 9	1	assets $1000	state	State Bd. Emerg'y Relief; Co. Bd. Relief.
*MISSOURI Acts '35, S. B. 7	70	$30[8]	U. S.	5 in last 9		assets $1500[9]	state	State Bd. Mgrs. Elee'y Insts; co. old age ass'ce bds.
MONTANA Laws '35, H. B. 195, 343	65	no limit	U. S.	5 in last 10	1		½ state ½ county	State Old Age Pens. Commn; co. old age pens. commns.

TABLE II
State Old-Age Assistance Laws

State	Age	Maximum Monthly Pension	Citizenship (or Years Residence)	Years Residence in State	Years Residence in County	Maximum Income or Assets	Source of Funds	Administration
*NEBRASKA Laws '35 (Sp. S.) H. B. 17, 3, 10	65	$30		5 in last 9			state	State Ass'ce, Comm.; Co. Ass'ce Comm.
†NEVADA STAT. ('29) §§ 5109-5138, Laws '35, c. 138	65	$1 (day)	15	10		assets $3000	county	State Bd. Relief, etc. Control; Bd. Co. Commrs.
*NEW HAMPSHIRE Laws '35, H. B. 448	70	$30	U. S.	5 in last 9		$30 (month)	county[10]	State Bd. Welf. and Relief; Co. Commrs.
NEW JERSEY Laws '31, c. 219, am'd, Laws '33, c. 149, Laws '35, cs. 108, 213	70	$1 (day)	U. S.	15	1	assets $3000	state and county	State Dept. Insts. and Agencies (Div. Old Age Relief); Co. Dir. Old Age Relief
NEW YORK Laws '30, c. 387 Laws '35, c. 668	70	no limit	U. S.	10	1	See note 11	½ state ½ city or county	State Dept. Soc. Welf.; local pub. welf. officials.
NORTH DAKOTA Acts '33, c. 254, am'd, Acts '35, cs. 123, 221	68	$150 (year)	U. S.	20		$150	state	State Welf. Bd., Co. Welf. Bd.
OHIO CODE ('35) §§ 1359-1 to 30	65	$25	15	15	1	$300 assets $3000[12]	state	State Dept. Pub. Welf. (Div. Aid for Aged); Co. Bd. Aid for Aged.
OREGON Acts '35, c. 407, am'd, (Sp. S.) S. B. 43-x	65	$30	U. S.	5 in last 9			state	State Relief Comm.; Co. Relief Comm.
PENNSYLVANIA Acts '33(Sp.S.) No. 64	70	$30	15	15			state	Local Bds. under State Dept. Welf.
*RHODE ISLAND Laws '35, H. B. 837	65	$30	20	5 in last 10		assets $5000	state	State Dept. Pub. Welf. (Old Age Sec. Div.); Town Dir. Pub. Aid.
TEXAS Laws '35 (2d Sp. S.) H. B. 26	65	$30	U. S.	5 in last 9		assets $5000	state	State Old Age Ass'ce Comm. (and local officials)
†UTAH STAT. ('33) §§ 19-12-1 to 19-12-13	65	$25	15	15	5	$300	county	Co. Commrs.
*VERMONT Laws '35, Nos. 82, 29	65	$30[8]	U. S.	5 in last 10		$360[13] assets $2500	state	State Old Age Ass'ce Commn. (and local officials)
*WASHINGTON Laws '35, c. 182	65	$30	U. S.	5 in last 10			state	State Dept. Pub. Welf.
†WEST VIRGINIA Acts '31, c. 32	65	$1 (day)	15	10	10	any	county	County Court
*WISCONSIN Laws '35, cs. 391, 554	65[14]	$1 (day)	U. S.	5 in last 9		assets $5000	state and county	State Ind. Commn. (Pens. Dept.); Co. Welf. and Co. Pens. Depts.
*WYOMING Acts '35, c. 101	65	$30	U. S.	5 in last 10		$360	½ state ½ county	State Dept. Pub.Welf. Co. Bd. Pub. Welf.
*DIST. OF COLUMBIA H. R. 6623, 74th Cong., 1st Sess. ('35)	65	no limit	U. S.	5 in last 9			District	Bd. Commrs. Dist.

* Plan accepted by Social Security Board.
† Optional with county.
(1) $50 for veterans.
(2) Including residence for at least one year preceding application.
(3) Age 65 after 1940.
(4) $60, if two or more members of family live together.
(5) Counties may supplement state funds.
(6) $3000 for husband and wife.
(7) Amount determined by county board.
(8) $45 for husband and wife.
(9) $2000 for husband and wife.
(10) State reimburses 5%.
(11) Must be wholly unable to support self.
(12) $4000 for husband and wife.
(13) Income, $500, assets $4000, for husband and wife.
(14) May be reduced to 60.

in New Jersey and Utah; the property tax in North Dakota and West Virginia; the gross business income tax in Oklahoma, although collection has been restrained by an injunction issued by the State Supreme Court; the tax on alcohol and horse racing in Massachusetts, and a tax on pari-mutual machines in Washington.[5]

Several of the laws passed in 1935 provide that they are to go into effect when federal funds are made available,[6] and others set the effective date for some time early in 1936.[7]

During the early part of 1936 several state legislatures have met in regular session. In their messages to their respective legislatures, the governors have specifically asked for legislative action for old-age assistance, referred to the value of legislation already enacted, or urged study and careful consideration of the need for such laws.

Although 1936 is an off year so far as legislative sessions are concerned, regular sessions are now (February 27) in process in Massachusetts, Mississippi, New Jersey, New York, Rhode Island, South Carolina, and Virginia. Alabama, Illinois, and Ohio are holding special sessions and Kentucky, having adjourned the regular session, has scheduled a special session beginning March 4. Old-age assistance bills are under consideration in many of these. Already in 1936 amendments have been enacted in Illinois, Kentucky, and Minnesota.[8]

DEVELOPMENTS UNDER THE FEDERAL ACT

With the failure of passage of the third deficiency bill (H. R. 9215) in August, 1935, the Social Security Board was delayed in setting up administrative machinery and allotments to the states were of necessity deferred until funds were made available. A skeleton organization was developed by means of a grant made by the Works Progress Administration to the Labor Department for a project, and loans of personnel and equipment from other governmental agencies. After the President appointed the three members of the Social Security Board, they chose Frank Bane, Director of the American Public Welfare Association, as executive director, and then proceeded to establish various bureaus for the functions delegated to the Board. The Public Assistance Bureau was created to administer federal grants to states for assistance to the aged, dependent children, and needy blind under Titles I, IV, and X. Miss Jane M. Hoey has been appointed director of this Bureau, assuming her position in January.

During December the Social Security Board and the Children's Bureau invited state directors of public welfare from the various states to come to Washington to discuss together the coöperative planning necessary to put the public assistance pro-

[5] For a discussion of the problem of financing the cost to the states of old-age assistance, see Shipman and Saum, *Federal Grants and the Problem of Financing Public Assistance*, *infra*, p. 289.

[6] California, Missouri, New Hampshire, Oregon.

[7] Alabama, Connecticut, Illinois, Minnesota.

[8] The American Public Welfare Association, with which the writer is associated, is frequently asked about desirable state legislation and in response has issued a pamphlet entitled *Suggested State Legislation for Social Security*.

visions of the Social Security Act into effect. They also discussed the information the federal government would necessarily need before deciding upon the acceptability of state plans submitted, and also for continuing reports as to state expenditures.[9] In this meeting it was very apparent that state authorities were relieved to find themselves consulted in regard to the information to be submitted in making application for federal funds and for later reporting on a continuing basis.

With the signature of the President on February 11, the third deficiency appropriation bill was enacted into law (Public No. 440, 74th Congress), appropriating to the Social Security Board "For grants to states for old-age assistance, as authorized in Title I of the Social Security Act, approved August 14, 1935, fiscal year 1936, $24,660,000." This appropriation is for the rest of the fiscal year ending June 30, 1936.

Within forty-eight hours after the President's signature, United States checks to Iowa, Alabama, and Delaware were in the mails. The plan for federal-state coöperation in old-age assistance is now under way, as shown by the following table of grants made for approved plans.

Table III

Federal Grants-in-Aid for Approved Plans for Old-Age Assistance
For the Period February 1 to March 31, 1936

State	*Grant for Assistance*	*Grant for Administration*†	*Total*
Alabama	$ 100,000.00	$ 5,000.00	$ 105,000.00
Arizona	....	....	....
Connecticut*	....	....	....
Delaware	31,500.00	1,575.00	33,075.00
District of Columbia	45,000.00	2,250.00	47,250.00
Idaho	150,000.00	7,500.00	157,500.00
Iowa	522,000.00	26,100.00	548,100.00
Maine	84,375.00	4,218.75	88,593.75
Maryland	160,000.00	8,000.00	168,000.00
Michigan	330,000.00	16,500.00	346,500.00
Mississippi	175,000.00	8,750.00	183,750.00
Missouri	300,000.00	15,000.00	315,000.00
Nebraska	330,600.00	16,530.00	347,130.00
New Hampshire	56,000.00	2,800.00	58,800.00
North Carolina	....	....	....
Pennsylvania	....	....	....
Rhode Island	28,600.00	1,430.00	30,030.00
Vermont	41,470.80	2,073.54	43,544.34
Washington	400,000.00	20,000.00	420,000.00
Wisconsin	375,000.00	18,750.00	393,750.00
Wyoming	53,280.00	2,664.00	55,944.00
Total	$3,182,825.80	$ 159,141.29	$3,341,967.09

*Although the Old-Age Assistance Plan submitted by Connecticut has been approved, no federal grant was made because, under the state law, no assistance payments may be made until April 15, 1936.

†The Social Security Act, §3(a), provides that, in addition to the grant for actual payments of old-age assistance, 5% more is to be granted from federal funds for either assistance or administrative costs.

[9] In response to requests after this meeting, the American Public Welfare Association issued a pamphlet entitled *Recording and Reporting with Regard to Old Age Assistance Under the Social Security Act.*

SOCIAL SECURITY THROUGH AID FOR DEPENDENT CHILDREN IN THEIR OWN HOMES

C. C. Carstens*

History of the Movement

The term "aid to dependent children in their own homes" has until recently been referred to as "mothers' aid," but it is a broader term than the latter. Even "mothers' aid" is by no means the only term which has been in vogue. Some states in their statutes use the terms "mothers' pensions" or "mothers' allowances." The use of the broader term in the Federal Social Security Act, which permits a broader application of the principle, is likely to have a general acceptance in the course of time.

The history of mothers' aid dates back to the first White House Conference, called by President Theodore Roosevelt in 1909. At that Conference, Rabbi Emil G. Hirsch of Chicago urged that the payment of public money be made possible to mothers of dependent children who might otherwise be placed in institutions, instancing the fact that most of these children had mothers living. The idea did not arouse enthusiasm among the members of the Conference at that time, but it was taken up with great enthusiasm by the National Congress of Mothers and other women's groups who made themselves felt in the development of the early mothers' aid legislation.

In Illinois, however, where the first mothers' aid law was passed in 1911, there was a different origin. Widowed mothers who had been giving their children good care frequently came to the Juvenile Court, asking to have their children placed in institutions. When the Court urged that they keep their children at home they pleaded their inability to support them at home. They found that neither private nor public relief was sufficient to meet their needs to keep their homes intact. This led to the Cook County Juvenile Court's strong advocacy of this new relief measure and to Judge Merritt W. Pinckney's thoughtful and devoted administration, which contributed much to its general acceptance.

Rarely has a movement in legislation spread as fast as that of establishing mothers' aid. By the end of 1913 there were such laws in twenty states. In 1915 eight more were added, in 1917 six more; after this they came more slowly. At present there

* A.B., 1891, Grinnell College; M.A., 1900, Ph.D., 1903, University of Pennsylvania. Executive Director, Child Welfare League of America, Inc., since 1921. Previously an executive of charitable and child welfare organizations.

are but two states, Georgia and South Carolina, without laws providing funds for the care of dependent children in their own homes. Similar laws are found on the statute books in the District of Columbia, Alaska and Hawaii.

The Scope of Mothers' Aid Laws

While the first laws enacted for this purpose were apt to be restricted to the widowed mother and her children, the later laws have had a wider scope to include other children in need of care than those of the widow, so that by 1931 only Connecticut and Utah restricted mothers' aid to widows, and in ten states and the District of Columbia statutes provide that assistance may be granted to any needy mother or any mother with dependent children. In spite of the fact that most laws are broad in their scope, their administration generally limits the aid to widows and their children. For example, in 1933 in the State of New York of 22,058 women aided under its broad statute, 19,201 were widows.

Although most all of the states of the United States, its territories and possessions are living under statutes which make mothers' aid payments possible, less than half of the more than 3,000 counties have made systematic appropriations for the care of dependent children under these statutes. In some states only a few counties make such appropriation and in a few states the laws on their statute books are entirely inoperative, for no other reason than a lack of appropriation.

In spite of these limitations of area in which the laws are in force, by 1931, 253,298 children in 93,620 families were reported to the United States Children's Bureau as receiving the benefits of such aid. This approximates in number the 299,417 children reported by the Bureau of the Census of the United States Department of Commerce as under care on January 1, 1933 in all the children's institutions and foster home agencies.

Even waiting lists do not give a correct measure of the need. In many counties applications are not investigated when funds are not available and some mothers who might be eligible for aid do not make their application under such circumstances. It is a reasonable estimate, therefore, that when mothers' aid becomes available in all states and counties and when funds are available to meet all legitimate needs the total number of children to be benefitted may rise to 500,000 or even more for the whole country.

There are at the present time limitations in most states as to the maximum that may be provided for each child, but in eleven states and in the District of Columbia the amount of the monthly grant may be adjusted to the needs and resources of the individual family. The average grant per family for December, 1933, as reported to the United States Children's Bureau by twenty states, showed Massachusetts as giving $52.89 per month per family, the highest of any average grants, with the lowest of any state being $9.76 per family in the same month.

The inadequacies expressed in these great variations of grants also account for

the number of beneficiaries not being greater at this time. During the depression appropriations for mothers' aid were either reduced or withdrawn entirely in some counties and states. In some areas, too, it was possible to get larger grants from public relief agencies than from the mothers' aid authority and therefore applications for mothers' aid were either withdrawn or not made. In many states even now many more widows' families are on relief than on the mothers' aid lists.

The variations in the grants among the various states cannot be accounted for by differences in standards of living and in the needs of families—they point to inadequacies in the meeting of needs by mothers' aid. Low grants are either supplemented by resources in the family or through aid given by relatives or private agencies, which at best are rarely adequate and continuous. It is evident from these figures that a very considerable expansion in grants is necessary in many counties and states if they are to meet the requirements of families for whose children the laws were enacted.

THE SOCIAL SECURITY ACT OF 1935

The Social Security Act, passed by the 74th Congress, under Title IV—Grants to States for Aid to Dependent Children—authorized an appropriation of $24,750,000 for the fiscal year beginning July 1, 1935, to be used for payments to the states equal to one-third of the sums expended by them for such aid during the quarter for which the allotment is made.[1]

It was estimated that in 1934 the total amount of grants in the United States and its territories and possessions from all public sources was about $37,000,000. With the expansion of mothers' aid to meet the needs of all dependent children who can be aided advantageously in their own homes[2] and with the more adequate development of grants it is reasonable to assume that the amount of money needed will be double the total of grants in 1934, or approximately $75,000,000. The sum authorized by Title IV of the Federal Act would provide adequate refunds of one-third of a total expenditure of approximately $75,000,000. For each fiscal year subsequent to June 30, 1936, the Federal Act authorizes the appropriation of whatever sum may be "sufficient to carry out the purposes" of Title IV.

This measure requires that in any state seeking to qualify under it there shall be a state plan which must:

"(1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by

[1] Social Security Act, Tit. IV, §§401, 403.

[2] Section 406 (a) of the Federal Act defines "dependent child" very broadly: "The term 'dependent child' means a child under the age of sixteen who has been deprived of parental support or care by reason of the death, continued absence from home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle or aunt, in a place of residence maintained by one or more of such relatives as his or their own home."

Although this definition determines the children with respect to whom federal funds may be paid, the states are free to incorporate a narrower definition in their plans.

the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide for granting to any individual, whose claim with respect to aid to a dependent child is denied, an opportunity for a fair hearing before such State agency; (5) provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be necessary for the efficient operation of the plan; and (6) provide that the State agency will make such reports, in such form and containing such information, as the Board may from time to time require, and comply with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports."[3]

A plan for such a program as is specified above must be approved by the Social Security Board but cannot be approved unless its residence requirements make every dependent child eligible for the aid who has resided in the state for one year immediately preceding the application for such aid or was born within the state within one year immediately preceding the application, if the mother has resided in the state for one year immediately preceding the birth.[4]

The provision that no political subdivision can benefit unless the aid is in effect in all subdivisions has an important bearing upon the development of aid to dependent children in all the states but particularly in rural districts. Until now such aid has been much more widely and generously provided in urban centers than for rural children. For instance, in one of the southern states aid to dependent children in their own homes is provided only in the county containing the largest city in the state and in three other counties with large urban areas. In another state the county containing the largest city and the one containing the third largest city are the only ones that provide mothers' aid.

Similar statements might be made about states in other sections of the country but particularly regarding rural states. If no city or county can benefit unless all counties in the same state are included for such benefits, the desire of the urban areas to receive refunds will tend to make the law mandatory on all areas.

Sums are provided by the federal government for each quarter, and equal to one-third of the total of amounts expended during that quarter under the plan that has been accepted beforehand. Eighteen dollars per month is set as a maximum for one child and twelve for each of the other dependent children in the same home which the federal government will allow in its calculations of one-third refund.[5] States and counties may appropriate larger sums but these will not increase the amount of refunds.

ADMINISTRATIVE DEVELOPMENTS UNDER THE STATE LAWS

In the development of mothers' aid since 1911 there is evidence of much broadening of purpose, eligibility, and intelligence in the application of the laws. In some

[3] *Id.* §402 (a). [4] *Id.* §402 (b). [5] *Id.* §403 (a).

of the states in the early days of the movement mothers' aid was urged as a payment to the mother because of the value she had been to the state in contributing children to its population. In others it was urged as a form of social justice. Those who were charged with the responsibility of administering laws very soon found themselves grappling with the problem of economic needs and the idea of a compensation for her function to the state was crowded aside by the questions that arose as to what needed to be done to meet the family budget.

Early laws in some of the states were passed on the assumption that a payment of money was all that was necessary. In others no provision was made for administrative service other than that of certain members of administrative boards who served in a volunteer capacity. In the passage of time these problems have largely righted themselves by experience in grappling with the problem of family relief, which mothers' aid is now generally recognized to be.

To begin with, residence requirements were inclined to be rigid but changes have been made in the laws of a number of the states, relaxing the restrictions as to residence. A requirement of one to three years in the state or county, or both, is still usual. The requirement of Title IV of the Social Security Law that but one year immediately preceding the application for aid shall be necessary will have the tendency to reduce residence restrictions still further. Indiana and Vermont have no residence requirements, Texas requires five years in the state, and New Jersey, five years in the county. Only four states require United States citizenship, although six more and the District of Columbia require that the mother has made application or has declared her intention to become a citizen. With greater rigidity in immigration laws in the United States a tendency is evidenced in mothers' aid statutes to become more rigid in citizenship requirements.

Eligibility, however, is not limited merely by questions involving citizenship or residence. With the development of recognition that mothers' aid is one of the important forms of family relief there has gradually come to be developed a procedure for determining the giving of relief on the basis of the same standards that have come to be applied in many areas to other relief measures. Inquiry is now usually made beforehand, even when citizenship and residence have been found to be no bar, as to the health, character and home-making qualities of the mother, and her ability to inculcate thrift in her children. Although certain states have encouraged the mothers to work full-time or at least a considerable part of the time, in most of the states she is required to remain at home at least two-thirds of the working hours, in order that she may give her children proper oversight.

Ownership of some property is usually permitted but restricted. A number of the states specifically permit ownership of a homestead or for an equity of from $500 to $2,000 of property, the amount varying greatly in the different states.

School attendance of the children has been a factor of importance in the eligibility of the mother to receive aid. To begin with, two states considered the administra-

tion of the mothers' aid law as belonging in state boards of education, but even these later transferred it to departments of welfare.

The growing tendency to make restrictions less rigid and to depend increasingly upon the application of social service principles has emphasized the importance of the use of trained staff. By this means there has been provided some oversight of the expenditure of grants and of the medical care of the mothers and children. Better housing has been insisted upon and often found for the family; housekeeping standards have been raised; the work of the mother has been diminished, sometimes by increased grants, and other times by setting limitations of eligibility. Children's recreational needs have been looked after, behavior problems among the children have found solution, truancy and delinquency have been decreased. The mother has been encouraged to keep a record of her expenditures, allowances have been put on a budgetary basis; altogether standards of living of the family have become substantially higher. Instead of the aid being given in the form of orders for groceries and fuel, cash has now come to be recognized as of more value in dealing with these families and the ability to manage cash has often become a standard in determining eligibility.

Supervision of these families is on the whole local. While in most of the states the decisions as to grants of aid are made by the juvenile court and the supervision is in the hands of the probation officers, the trend here and there is away from leaving the administration in the hands of the court and toward the use of county or state boards, having no relationship to court administration. One of the reasons for this change is the recognition of the difficulty of developing standards for the administration of the same law among the different courts. On the other hand, when the local administration is in the hands of county boards, state boards of public welfare are able to coördinate the services into a program of state administration.

It is generally recognized that the states having such oversight provide better service in the individual counties and especially where the state provides for from one-third to one-half of the expense for the support of the families. In this way state supervision comes naturally into the right relationship and at an early enough stage in the process of determining just what the program in the individual family shall be. Not only does the investigation of the circumstances in the individual family come under scrutiny, but a plan is made that is likely to lead to wholesome relationships being established between the family and the social work visitor. Some of the states engaged nutritionists for the study of budgets and for wise help in expenditures. The trend is clearly toward state administration.

These administrative services have led to an increase of administrative costs but they have generally brought economies in expenditures to the families. Such administrative costs are now reckoned as amounting to from ten to fifteen percent of the total mothers' aid budget, if the work is to be well done and the money is to bring good returns in family and child life.

THE EFFECT OF TITLE IV OF THE FEDERAL ACT

Despite their limited application, the laws now on the statute books of the various states and territories of the United States have already resulted in virtually a revolution in child care. In most of our states children are now given an opportunity to grow up with their mothers, or near relatives, when by death or other misfortune the home has been broken. In certain sections of our land, and some sections of many states, foster care, however, is still needed to provide for the same types of children, principally because no appropriations have been made to make a stay in their own homes possible. This cannot be due to any motive of economy, for it generally costs about twice as much to provide for the child in suitable foster care as to maintain him in his own family.

With the coming of a demand for the social security of those persons who are least able to meet the vicissitudes of everyday life, the maintenance of home life for helpless children, whenever possible, has been recognized as a reasonable social objective. Mothers' aid has so far been an experiment. The principle lying behind the service is now accepted by everybody. Lessons of importance have been learned in its administration in the various states. But much more needs to be done to have the benefits of such a service come to all who are eligible, and in such a way that the large investment shall bring reasonable returns in happiness and more wholesome home life. Title IV of the Social Security Act will encourage a large acceptance of the principle of maintaining life for dependent children in their own families, and particularly in rural areas.

With the further development of state departments of public welfare, and county or other administrative units in the various states, a more or less harmonious plan will be developed. The Social Security Board, to whom Congress has entrusted the development and supervision of this project, through the state departments, will stimulate the acceptance of the law and guide the states' administration in a general way. The states, through their departments of public welfare in name or in essence, will directly or through the county, city or other local units, bring the largest possible benefits of this law to the children and families who need them.

There are many obstacles first and last to such a program's being worked out in all the states. The principle of the grant-in-aid of which Title IV makes use is a powerful instrument, however, for standardization. Out of this crazy-quilt of divergent policies now in existence in the various states it is reasonable to hope that Title IV, under the Social Security Board, may lead to harmonious, though not necessarily identical, plans in the various states.

MATERNAL AND CHILD WELFARE PROVISIONS OF THE SOCIAL SECURITY ACT

Katharine F. Lenroot*

In any discussion of the various provisions of the Federal Social Security Act, especially of those parts of the Act relating to maternal and child welfare, two questions are frequently raised. The first, why should a program for federal-state coöperation in behalf of the health and welfare of mothers and children be considered a logical part of a broad economic program dealing with such subjects as unemployment compensation and old-age insurance? The other is, what were the special conditions which rendered imperative the establishment of a program of federal aid to the states for maternal and child welfare?

The general purpose of the entire program, and the relationship of children to this program, were indicated by the President in his messages to the Congress of June 8, 1934, and January 4, 1935, in both of which he said: "Among our objectives I place the security of the men, women, and children of the Nation first." This placed the welfare of children on a basis of equal importance with the welfare of adults.

The Committee on Economic Security appointed by the President to make recommendations for legislation to provide "safeguards against misfortunes which cannot be wholly eliminated in this man-made world of ours" was even more specific in defining the relationship of children to a general program of economic security for the individual and his family. In its report to the President the Committee emphasized the fact that "the core of any social plan must be the child" and declared that "Every proposition we make must adhere to this core." The report then proceeded to enumerate the various parts of the plan and to point out their direct or indirect bearing on the welfare of the child, as follows:

"Old-age pensions are in a real sense measures in behalf of children. They shift the retroactive burdens to shoulders which can bear them with less human cost, and young parents thus released can put at the disposal of the new member of society those family resources he must be permitted to enjoy if he is to become a strong person, unburdensome to the State. Health measures that protect his family from sickness and remove the menacing apprehension of debt, always present in the mind of the breadwinner, are child-

* A.B., 1912, University of Wisconsin. Chief, Children's Bureau, United States Department of Labor. President, National Conference of Social Work. Chairman of United States delegations to Fifth and Sixth Pan American Child Congresses in Cuba, 1927, in Peru, 1930. Author of bulletins and articles on child welfare.

welfare measures. Likewise, unemployment compensation is a measure in behalf of children in that it protects the home. Most important of all, public-job assurance which can hold the family together over long or repetitive periods of private unemployment is a measure for children in that it assures them a childhood rather than the premature strains of the would-be child breadwinner."[1]

In addition to the benefits brought to children through these general measures, the Committee recognized the need for special benefits which these general measures alone could not provide.

The effect of economic insecurity upon children had been brought to public attention by the presence of 8,000,000 children under 16 years of age in families receiving unemployment relief—representing about 40 percent of the total number of persons on relief—in the winter of 1934-35, and by evidences that the health and welfare of children, even of those not in relief families, had suffered as a result of the depression and of limitation of the resources of agencies created to serve their needs.

In considering the special needs of children, the Committee on Economic Security, in preparing its report, took into consideration not only the approximately 280,500 dependent children then benefitting by the very uneven and often inadequate grants for mothers' assistance under state laws, a number recognized as representing less than half of the number probably eligible for and in need of such aid, but also the large number of dependent and neglected children receiving care away from their own homes—approximately 250,000—about three-fifths of whom were in institutions and the remainder in boarding, free, work, or wage homes. Some children, in increasing numbers since the depression began, were being cared for in almshouses, a practice condemned a hundred years ago. The Committee was also aware of the more than 200,000 delinquent children who come before the courts each year, of the more than 75,000 children born out of wedlock each year, of the 300,000 to 500,000 physically handicapped children, and of the economic loss and insecurity to children resulting from the high maternal death rate in the United States. It was recognized that the need for a preventive as well as a remedial program to meet these conditions was very great and beyond the power of individual families or local communities to provide for themselves.

These, in brief, were among the major reasons which led the Committee on Economic Security to recommend to the President the inclusion of special measures for public assistance to dependent children, and for maternal and child health and welfare, as an integral part of a broad economic and social program. These recommendations were transmitted by the President to Congress and were embodied in the Social Security Act which was passed after extensive hearings and discussion, and approved by the President, August 14, 1935.[2] They constitute recognition of the fact that security and opportunity for children are dependent not alone upon family income, but also upon parental intelligence and understanding and community pro-

[1] COMMITTEE ON ECONOMIC SECURITY, REPORT TO THE PRESIDENT (1935) 35.

[2] Pub. No. 271, 74th Cong., 1st Sess., 49 STAT. 620.

vision for the health and social services which individual families, under modern conditions, cannot provide singly.

Of the eleven titles of the Act, two are especially concerned with children. Title IV, dealing with public assistance to dependent children in their own homes under the so-called mothers' aid laws in effect in the various States, is administered by the Social Security Board. This title will not be discussed here.[3]

Title V provides for three types of services for maternal and child welfare which are administered by the Children's Bureau of the United States Department of Labor. Part 4 of the title relates to vocational rehabilitation and is administered by the Office of Education of the Department of the Interior.

The following is a brief summary of those parts of the Act which are administered by the Children's Bureau.

Title V, Part 1, Maternal and Child-Health Services. This part of the Act, in Section 501, authorizes an annual appropriation of $3,800,000, "For the purpose of enabling each State to extend and improve, as far as practicable under the conditions in such State, services for promoting the health of mothers and children, especially in rural areas and in areas suffering from severe economic distress," and states that "the sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Chief of the Children's Bureau, State plans for such services."

Allotments to the states from this appropriation are directed by Section 502 of the Act to be made by the Secretary of Labor on the following basis: An initial uniform allotment of $20,000 to each state (Hawaii, Alaska, and the District of Columbia are considered as states for the purposes of the Act); an additional allotment based on the ratio of live births in the State to the total number of live births in the United States; and an allotment based upon the need of the state for financial assistance in carrying out its state plan, the number of live births in the state being taken into consideration. Funds allotted under this latter provision need not be matched. Other allotments are to be matched equally by state, or state and local, funds.

Title V, Part 2, Services for Crippled Children. The annual appropriation authorized under this heading (Section 511) is "For the purpose of enabling each State to extend and improve (especially in rural areas and in areas suffering from severe economic distress), as far as practicable under the conditions in such State, services for locating crippled children, and for providing medical, surgical, corrective, and other services and care, and facilities for diagnosis, hospitalization, and aftercare, for children who are crippled or who are suffering from conditions which lead to crippling." Plans for such services are to be approved by the Chief of the Children's Bureau.

Allotments for services for crippled children, (Section 512) are on the following

[3] For a discussion of this title, see Carstens, *Social Security Through Aid for Dependent Children in their Own Homes, supra*, p. 246.

basis: A uniform grant of $20,000 available to each state and the balance available according to the need of each state as determined by the Secretary of Labor after taking into consideration the number of crippled children in such state in need of the services referred to in Section 511 and the cost of furnishing such services to them. These grants are to be matched 50-50 by state, or state and local, funds.

Title V, Part 3, Child-Welfare Services. The annual appropriation authorized by this part of the Act (Section 521) is "For the purpose of enabling the United States, through the Children's Bureau, to coöperate with State public-welfare agencies in establishing, extending, and strengthening, especially in predominantly rural areas, public-welfare services (hereinafter in this section referred to as 'child-welfare services') for the protection and care of homeless, dependent, and neglected children, and children in danger of becoming delinquent." The federal funds are to be allotted by the Secretary of Labor for use by coöperating state public-welfare agencies on the basis of plans developed jointly by the state agency and the Children's Bureau. Unlike funds allotted for maternal and child health services and services for crippled children, these funds do not have to be matched by the states. A uniform allotment of $10,000 is available to each state and the remainder is allotted on the basis of the ratio of the rural population of the state to the total rural population of the United States. Although there is no provision for matching funds, the Act indicates that there must be financial participation by the state or by local communities, since it states that "The amount so allotted shall be expended for payment of part of the cost of district, county, or other local child-welfare services in areas predominantly rural, and for developing State services for the encouragement and assistance of adequate methods of community child-welfare organization in areas predominantly rural and other areas of special need." Another difference between Title V, Part 3, and Parts 1 and 2, lies in the provisions relating to approval of state plans. No conditions are prescribed for approval of state plans for child-welfare services other than that they are to be "developed jointly" by the state agency and the Children's Bureau. In Sections 503 (a) and 513 (a), the Act prescribes the conditions to be met by state plans for maternal and child health services and services for crippled children, respectively, substantially as follows:

1. Financial participation by the State.
2. Administration or supervision of administration by a State agency.
3. Such methods of administration (other than those relating to selection, tenure of office and compensation of personnel) as are necessary for efficient operation of plan.
4. Provision for such reports by the State agency as the Secretary of Labor may from time to time require.
5. In the case of maternal and child-health services: Extension and improvement of local maternal and child-health services administered by local health units.

   In the case of services for crippled children: Provision for carrying out the purposes specified in the Act (Section 511).

6. Coöperation with medical, nursing, and welfare groups and organizations and, in the case of services for crippled children, with any agency in the State administering State laws for vocational rehabilitation for physically handicapped children.
7. State plans for maternal and child-health services must also make provision for development of demonstration services in needy areas and among groups in special need.

Even the most cursory examination of the purposes of these three types of maternal and child-welfare services indicates the great emphasis placed by the Act upon the extension of activities to rural areas. Among the considerations which prompted this emphasis on rural needs was the fact that since 1929 the infant mortality rate in rural areas has exceeded that in urban areas each year, although prior to 1929 the reverse was true. The inadequacy of provision for prenatal care and obstetric nursing services in rural districts has long been recognized, as has the lack of resources for dealing with homeless, dependent, and neglected children and children in danger of becoming delinquent.

In addition to the question of need for maternal and child welfare services and the extent to which the Federal Social Security Act attempts to meet this need, a question frequently asked is, Were the states in a position to undertake immediate coöperation with the federal government in carrying out the purposes of the Act or did they require special enabling legislation to permit them to do so?

As far as maternal and child-health services are concerned, all but three states had participated in a coöperative program for the promotion of the welfare and hygiene of maternity and infancy from 1922 to 1929, at which time the federal maternity and infancy act expired and federal funds were withdrawn. Following withdrawal, state appropriations were materially reduced, especially during the depression. At the time the Committee on Economic Security made its report to the President, 23 states were listed as having no special funds for maternal and child health, or as having appropriations of $10,000 or less for this purpose. Meantime the need for such services had become acute and the fact that the maternal mortality rate in the United States continued to be higher than that of nearly all other progressive countries, even after allowance is made for differences in estimating mortality rates, suggested the need for renewed federal participation in a nation-wide program for maternal and child health. What is contemplated in the Social Security Act, however, is not merely a revival of the same type of service given from 1922 to 1929 but a program embracing children above the age of infancy and early childhood, as well as maternity and infancy, and stressing particularly the rural areas and the smaller communities. The federal government, under this provision of the Act, will not engage directly in such activities, but will merely give aid to the states for this purpose under well-established precedents. Legislative action to be taken by the states under this arrangement, where needed, has been confined to simple authorization enabling the state to coöperate, and appropriations to provide state financial participation. State plans for coöperation under this part of Title V of the Social Security Act have

already been submitted by all but three states. Plans have been approved for 31 states (as of March 31).

At the time the Social Security Act was approved by the President, all but 11 states had passed laws recognizing the need for public funds for medical care and services for crippled children and state funds actually had been appropriated in 33 states although some appropriations were so small that but few children could be cared for. There was, therefore, less readiness on the part of the states for coöperation under Part 2 of Title V than under Part 1. Plans have been officially submitted by 31 states, and 19 plans have been approved (as of March 31).

As regards child-welfare services, very few states were in the position of Alabama which, for 12 years, had been laying the foundations for an adequate program of public-welfare services and which had established local machinery for this purpose in every county in the state but one. Alabama was the first of the states to receive approval for its child-welfare plan which is under the administration of the Bureau of Child Welfare of the State Department of Public Welfare. About a dozen states, in all, had developed some form of state or local coöperation in extending child-welfare services to areas outside the large urban centers. Plans for coöperation under the Social Security Act have been submitted by 30 states, and of these 17 have been approved (as of March 31).

In a number of states special enabling legislation would not seem to be required to permit coöperation under the maternal and child-welfare provisions of the Social Security Act since existing laws relating to the promotion of maternal and child health, services to crippled children, or child welfare, appear to be broad enough to authorize the particular state to accept the grants-in-aid available for these purposes and to coöperate with the federal agency in administering them.

A few states have made possible, by general enabling legislation, the acceptance of federal grants for unemployment relief and social security, and coöperation with the federal government. Some of the states, however, have found it necessary to pass laws authorizing a state agency to accept federal grants-in-aid and to coöperate under the maternal and child-welfare provisions of the Act.

Plans and budgetary estimates submitted to the Children's Bureau by the states are made out on special forms and are accompanied by a certificate of the executive officer of the official state agency administering the services concerned, agreeing that the plans as submitted shall, upon their approval by the Chief of the Bureau, constitute the basis of administration as contemplated under the Act, and certifying that the estimates are based on the availability of state and local funds for the services and facilities described in the plan. There are submitted with these documents, a certificate from the state treasurer showing these funds to be on deposit, and a certificate from the attorney general of the state, stating that he has examined into the constitution and law of the state with respect to the matter of the administration of the services (maternal and child health, crippled children, or child welfare) and has examined

the rules, regulations, and other instruments, and certifies that the statutes are valid and that the statutes, rules and regulations constitute all the applicable law of the state. Copies of all such state laws, rules, regulations, orders and court decisions pertaining thereto, are submitted with the plan. Every precaution is taken to make sure that federal-state coöperation in carrying out the purposes of the Act is legal in every way.

When a state plan is received in the Children's Bureau, these legal documents and budgetary estimates are carefully examined, and the plan is also considered in the light of its provisions for administration. In this part of its task the Children's Bureau follows the guidance of a general advisory committee composed of outstanding authorities, and of three special advisory committees, one for each of the three types of services, which meet from time to time to discuss and recommend general principles of administration and procedure.

The state plan, accompanied by the relevant budgetary and legal comments, is passed on by the director of the division concerned. The Children's Bureau has organized a Maternal and Child Health Division, a Crippled Children's Division, and a Child-Welfare Division, to have immediate direction of federal administration. With the approval of the division director, a state plan for maternal and child-health or crippled children's services is then submitted to the Assistant Chief of the Bureau, who is a physician, and to the Chief, who is a social worker. Final approval of all plans is by the Chief of the Bureau.

When the Chief of the Children's Bureau has approved a state plan, she is required by the Social Security Act so to notify the Secretary of Labor who, under the terms of the Act, is to estimate the amount to be paid to the state. A certificate for payment of the federal funds is then made out and forwarded to the Treasury with a voucher which is filed in the General Accounting Office. The check is then sent out from the Treasury with a notice advising the state of the particular type of service for which the check is intended. This is more or less routine procedure, and payments are usually received by the states with great promptness after approval of the state plans.

For the present fiscal year, the appropriations authorized by Congress for carrying out the purposes of the Social Security Act were carried in the Supplemental Appropriation Act and are for the period February 1 to June 30, 1936. As payments to the states are, for the most part, on a quarterly basis, the first checks sent to the states were for the two months of the quarter ending March 31.

The federal administrative staff in the Children's Bureau is not large. As already stated, administration of each of the three types of services is under the immediate direction of a division director. The directors of the Maternal and Child-Health Division and the Crippled Children's Division are both physicians, and receive general supervision from the Assistant Chief of the Bureau who is also a physician. The Child-Welfare Division is headed by a social worker receiving general supervision

from the Chief of the Bureau. A Public-Health Nursing Unit, headed by a public health nurse, is placed, for administrative purposes, under the Maternal and Child-Health Division, but serves all three divisions, since the entire program is closely coördinated. The same applies to the small staff of regional consultants who are available to give consultation service and assistance to the state agencies on the three phases of the program. Through this consultant staff the services of a medical officer, a public-health nurse, and a social worker are made available to a group of states in each region.

The plans already submitted by the states reveal the extreme latitude permitted in adapting the coöperative services to local needs and conditions. No two plans contain identical provisions for any one type of service although all aim at the attainment of an identical goal: Security for the beginnings of life and for the nurturing of the Nation's most valuable asset—the children of today who are the citizens of tomorrow.

The following are summaries of three state plans—one for maternal and child-health services, one for crippled children's services, and one for child-welfare services—each from a different section of the country. These plans were not selected on a comparative basis, but as examples chosen at random of the different types of activity to be carried on by the states under these three different provisions of the Social Security Act.

(1) *Plan for Maternal and Child-Health Services*

This state has the highest infant mortality rate, the highest mortality rate from infantile diarrhea, and one of the highest maternal mortality rates in the United States.

All public-health work in the state is under the Bureau of Public Health and every county but one has a public health nurse. Under the state plan for maternal and child-health work made possible by the Social Security Act a division of Maternal and Child Health will be established with a full-time director to be responsible to the Director of the Bureau of Public Health. This division will administer directly the following activties: Coördination of the activities of the Bureau of Public Health and the Bureau of Child Welfare that affect maternal and child health; direction and supervision of all maternal and child-health activities in the state; assistance to local communities in planning programs for child health; seeing that all areas in the state are reached as far as possible, with special attention to sections most in need; assistance to local communities in coördinating plans; provision, insofar as is possible, of facilities for improving local health services; provision of teaching programs to reach general practitioners, physicians, and nurses; provision of periods of formal education for workers conducting a health education program. This program is to include mothers' classes, prenatal and infant clinics, midwife classes and supervision, dental and eye clinics, school health supervision, orthopedic clinics for diagnostic purposes conducted in coöperation with the Bureau of Child Welfare.

The state plan calls for additional county public-health nurses, for regional supervising nurses, and for the extension and improvement of existing prenatal clinics, syphilis clinics, well-baby clinics, and dental clinics in rural areas, hitherto limited by lack of personnel or funds. A demonstration maternal and child-health program is contemplated in a district composed of two counties selected because of the high infant death rates.

Local nursing advisory committees already exist in most counties. A state committee on maternal and child health will be formed with members from the state medical, dental, nursing, tuberculosis and other associations, and of representatives of child welfare, educational, and other groups.

(2) *Plan for Crippled Children's Services*

This plan, formulated by a western state, provides for close coöperation between the maternal and child-health, crippled children's, and child-welfare services. Administration will be in a Division for Crippled Children of the State Board of Health, the agency designated by executive order of the governor to administer the plan. The director of this division will also be director of the Division of Maternal and Child Health, and will give one-fourth of his time to the crippled children's work. A full-time assistant director—either a qualified medical social worker with actual experience in a crippled children's program or an orthopedic nurse with the same experience—will have the responsibility of actually supervising the activities undertaken after the plan and policies have been established.

Activities contemplated under this plan include the locating of crippled children in coöperation with state and private agencies and the maintenance of an active file of cases in the state; the holding of itinerant diagnostic clinics at various points and at various times depending upon the number of known cases in need of care in the different areas, preparations for such clinics to be made by the local nurses on the staff of the State Board of Health; hospitalization, surgical, corrective, and convalescent care in approved orthopedic or general hospitals and in approved convalescent and boarding homes (as there are no facilities or personnel for such activities in this state, the children will be taken to a nearby state where such services are available); follow-up work in the child's home through coöperation with the State Welfare Department and public-health nurses; and establishment of a program for prevention of crippling, through coöperation in promotion of a general public-health program, through accident-prevention campaigns, through furthering the maternal-care program to prevent birth injuries, and by encouraging the immediate reporting and providing for immediate care of infantile-paralysis cases through the family physician, consultation service, hospitalization, etc.

An advisory committee appointed by the State Health Officer and composed of representatives of medical, nursing, dental, and hospital groups as well as civic organizations will assist the state's efforts to carry out its plan for crippled children's services and will also help to coördinate the activities of private agencies in the state having an interest in this type of service for children.

Heretofore some of the children in the state have been rendered partial service at the state home for children or in private homes as wards of the state. The plan set up under the Social Security Act marks an entirely new development in this state in that it establishes a service for the complete physical rehabilitation of the crippled child.

(3) *Plan for Child-Welfare Services*

This state for twelve years has been laying the groundwork for an adequate structure for public-welfare services. The plan for child-welfare services under the Social Security Act submitted by the State Department of Public Welfare was the first to receive approval by the Children's Bureau.

The activities to be undertaken under this plan combine new services with a strengthening and development of those already in effect. The State Bureau of Child Welfare of the State Department of Public Welfare is now responsible for general supervision of all cases involving children, including the social investigation of all adoption petitions filed, the

licensing and supervision of child-caring institutions, the reception and care of a group of children committed to its custody through the juvenile courts, administration of the Aid to Dependent Children Act of the state (the plan for which has been approved by the Social Security Board), regulation of boarding-home care of children, etc. The Bureau of Child Welfare serves the county staffs of child welfare through the Bureau of Field Service.

With funds allotted under Title V, Part 3, of the Social Security Act, the field staff of the State Department of Public Welfare is to be made adequate to serve smaller districts so that they may give consultant service to every county on special problems of child care, dependency, prevention of delinquency, protection of neglected or ill-treated children, and probation work, and so that they may encourage and strengthen children's agencies, public and private. Three trained and experienced case consultants, one a Negro, will be added to the field staff to give more intensive supervision of children's problems to the county staffs.

In order to give greater emphasis to community organization and recreational facilities for children, four selected areas, of four counties each, in different sections of the state, are to be used for demonstration purposes to develop such resources. General child-welfare activities will be developed and recreation as a deterrent to delinquency will be stressed. One person will be assigned to each of these areas, one of them to be a Negro. In each area one county will be selected for intensive work. Coöperative arrangements have been established with an educational institution and with women's groups.

As funds do not yet permit establishment of a Bureau of Mental Hygiene, the plan provides for a psychiatric social worker to serve the Bureau of Child Welfare. This worker would also serve the Division of Foster Home Care and would be available to the special children's workers in the county departments of public welfare.

The whole plan aims to establish a coherent program beginning with state supervision and bringing the whole service down to a basis of intensive case work with the individual child who may come to the attention of the county unit.

PUBLIC HEALTH PROVISIONS OF THE SOCIAL SECURITY ACT

Edgar Sydenstricker*

The Social Security Act of August 14, 1935 is unique in that it is the only piece of national legislation enacting social insurance here or abroad which, at the same time, provides for direct means of prevention of ill health as one of the principal causes of economic insecurity. In all other countries, so far as the writer is aware, efforts to mitigate or eradicate any specific cause of insecurity is undertaken by legislation which is either entirely separate from efforts to lessen the effects of such causes or provides only indirectly for preventive measures. Title VI of the Social Security Act definitely authorizes appropriations by the Congress for "public health work."

This provision was not at first contemplated when, in the summer of 1934, the Committee on Economic Security was appointed by President Roosevelt. Even when the Committee assembled a technical staff to study the problems of economic insecurity, health insurance was specified as the only topic for inquiry in the field of health. This was done probably because health insurance is almost universally included in other modern countries as a form of social insurance. It was not long, however, before the technical staff to which the subject of health was specifically assigned realized that health insurance was only one method by which certain risks to economic security might be lessened. In fact, a simple analysis of the problem showed that the principal risks to economic security arising out of ill health could be classified into three broad categories, as follows:

(1) Loss of efficiency and health itself and thus loss or impairment of the capacity to be employed;

(2) Loss of earnings resulting from disabling illness among gainfully employed persons;

(3) Costs of medical care to gainfully employed persons and their families.

* M.A., 1902, Washington and Lee University; post-graduate study, Washington and Lee University, University of Chicago, and Johns Hopkins University. Scientific Director, Milbank Memorial Fund, 1928-1936. Member of the technical staff of the Committee on Economic Security, 1934-1935, in charge of studies of risks to economic security arising out of ill health. First public health statistician, United States Public Health Service, 1915-1928, and consultant thereto, 1928-1936. Chief of Service, 1923-1924, of the epidemiological intelligence and public health service, League of Nations, in initiating the statistical work of the League's international health organization. Author: *Collective Bargaining in the Anthracite Industry; Conditions of Labor in the United States; Brief History of Taxation in Virginia; Health and Environment;* also author of various scientific articles and bulletins on epidemiology, social research, etc.

Any opinions presented in this article are, of course, the author's views as an individual.

Note: It is with profound regret that we report the death of Mr. Sydenstricker on March 19, 1936. Ed.

It was also clearly recognized that no one method of attacking all of these risks had as yet been devised. Some students of the problem have argued that the problem of economic security, including security against risks arising out of ill health, could be solved by indirect means, such as unemployment compensation, old-age annuities, wage increases, stabilization of employment, housing programs, limitation of size of family, and the like. But comprehensive studies which have been made during the past decade have clearly shown that such indirect, Utopian methods have not solved the problem. Even if every family or every individual should have an income equal to what Dr. Townsend proposes for persons over 60 years of age, many could not bear the expenses of serious illness if the physician is to be adequately paid and the hospital kept out of debt. As a matter of fact, there are ample statistics amassed in this country to show that disabling sickness is an unpredictable expense to a large proportion of the people. As the report of the Committee on Economic Security to the President pointed out, among an average million persons in the United States, there will occur annually between 800,000 and 900,000 cases of illness. It may be predicted for this average million persons that, though 470,000 will not be sick during a normal year, 460,000 will be sick once or twice, and 70,000 will suffer three or more illnesses. Of those who become ill, one-fourth will be disabled for periods varying from one week to the entire year. These illnesses are exclusive of invalidism.

The Committee's staff made comprehensive studies of all of the probable risks to economic security arising out of ill health, as outlined above. The report of the Committee to the President of January 15, 1935, however, included only the recommendations on the first of these risks. It was stated in that report that more time was required to consider possible methods of adapting the principle of insurance in this country to the risk of loss of wages from illness and to the risk of expense of medical care. Those members of the Committee's technical staff who were charged with the study of health insurance properly, I think, recognized the fact that individuals and agencies rendering medical services—the physicians, nurses, dentists, hospitals, and clinics—were involved, both financially and professionally. The staff therefore recommended to the Committee that before any system of health insurance should be proposed, the medical and nursing professions and institutions should be consulted and that ample time should be allowed to discover how the insurance method of distributing loss of wages due to ill health and costs of medical care could best be employed in this country. This attitude, adopted at the very outset of the Committee's work, is in striking contrast to the action of the principal foreign countries in initiating health or sickness insurance. Various advisory committees in medicine, dentistry, hospital management and nursing were appointed and lengthy conferences were held. The technical staff of the Bureau of Medical Economics of the American Medical Association were consulted. All of these steps are described

in the report of the Committee on Economic Security to which reference has been made.[1]

The question of health insurance, however, was still further deferred for later consideration probably because it was generally felt that every opportunity should be given to the medical profession to study the matter and to propose other ways of meeting the problem of economic insecurity due to ill health, if it saw fit. The omission of any provision in the Social Security Act for insurance against unemployment due to temporary (non-industrial) disability cannot, however, be wholly justified on these grounds, and the insurance features of the Act would, in the writer's opinion, have been more effective and acceptable if cash benefits for sickness had been provided. The actuarial problems involved in such a provision are simple compared to those of compensation for unemployment from other causes, and the provisions could have been put into effect within a year after the Act was passed.

The Committee's report, however, pointed out, with an emphasis probably never before given in a document of its character, that efforts to *prevent* sickness itself constitute a legitimate method of coping with the risk of sickness. The incidence of preventable sickness itself, it was urged, was a problem of social concern. Although science has not provided all of the means with which to prevent all sickness, or to enable everyone to live healthfully until the end of the natural span of life, millions of the American people are suffering from diseases and over a hundred thousand of them die annually from causes that are preventable if existing scientific knowledge could be applied. It is hardly necessary to refer in detail to the indubitable evidence on this point. All of the general public may not be fully aware of the possibilities of disease prevention, but sanitarians—the professionally trained workers in public health—are optimistic over these possibilities and need only relatively small appropriations with which to realize them. As I have said elsewhere,[2] "the ravages of typhoid fever, diphtheria, and smallpox have been enormously lessened; they ought to be and can be eradicated. The infant death rate has been cut in half in the last quarter-century, but it can again be cut in half. Mortality from tuberculosis has been reduced by 60 per cent since 1900, and could be halved again. Two-thirds of the annual thirteen thousand maternal deaths are unnecessary. At least three-fourths of a million cases of syphilis are clinically recognized annually; but more than half of these do not obtain treatment at that stage of the disease when the possibility of cure is greatest. We have been rather vociferous in recent years over the health and welfare of children; yet it is estimated that 300,000 are crippled, a million or more are tuberculous, and nearly half a million have heart damages or defects. The mortality of adults of middle or older ages has not appreciably diminished. The expectation of length of life at forty is about the same now as it was in 1850, 1890, or 1900. The mortality of adults who should be in their physical prime—20-44 years

[1] COMMITTEE ON ECONOMIC SECURITY, REPORT TO THE PRESIDENT (1935) 6, 38-43. For the personnel of the advisory committees on public health problems, see *id.* 52-53.

[2] Sydenstricker, *Health Under the Social Security Act* (1936) 10 SOCIAL SERVICE REV. 14.

of age—is almost as great as that of the younger group which includes babies and children. The mortality of persons who ought to be in full mental vigor and still capable of many kinds of physical work is over three times that of the younger adults. In the young adult ages, 20-34 years, tuberculosis still tops the list as a disease; accidents and homicides snuff out about one life in a thousand annually; organic heart disease appears in even this young age period as the third most important cause of death. All careful studies of illness and physical impairments corroborate these ghastly records; in fact, they reveal even more impressively than mortality statistics the extent to which the vitality of the population is damaged in the most efficient period of life. This disconcerting evidence of impaired efficiency among our adult population takes on a graver significance in view of the changing age of our adult population."

It is to the lasting credit of the Committee on Economic Security that in its report to the President it fully recognized the significance of the public health situation. In this report the Committee said:

"It has long been recognized that the Federal, State, and local Governments all have responsibilities for the protection of all of the population against disease. The Federal Government has recognized its responsibility in this respect in the public-health activities of several of its departments. There also are well-established precedents for Federal aid for State health administration and for local public facilities, and for the loan of technical personnel to States and localities. What we recommend involves no departure from previous practices, but an extension of policies that have long been followed and are of proven worth. What is contemplated is a Nation-wide public health program, financially and technically aided by the Federal Government, but supported and administered by the State and local health departments."[3]

The specific provisions in the Social Security Act of August 14, 1935, relating to public health are as follows:[4]

TITLE VI—PUBLIC HEALTH WORK

APPROPRIATION

SECTION 601. For the purpose of assisting States, counties, health districts, and other political subdivisions of the States in establishing and maintaining adequate public-health services, including the training of personnel for State and local health work, there is hereby authorized to be appropriated for each fiscal year, beginning with the fiscal year ending June 30, 1936, the sum of $8,000,000 to be used as hereinafter provided.

STATE AND LOCAL PUBLIC HEALTH SERVICES

SEC. 602. (a) The Surgeon General of the Public Health Service, with the approval of the Secretary of the Treasury, shall, at the beginning of each fiscal year, allot to the States the total of (1) the amount appropriated for such year pursuant to section 601; and (2) the amounts of the allotments under this section for the preceding fiscal year remaining unpaid to the States at the end of such fiscal year. The amounts of such allotments

[3] At p. 40.

[4] A few provisions relating to matters of administrative routine have been omitted.

shall be determined on the basis of (1) the population; (2) the special health problems; and (3) the financial needs; of the respective States. . . .

(b) The amount of an allotment to any State under subsection (a) for any fiscal year, remaining unpaid at the end of such fiscal year, shall be available for allotment to States under subsection (a) for the succeeding fiscal year, in addition to the amount appropriated for such year.

(c) Prior to the beginning of each quarter of the fiscal year, the Surgeon General of the Public Health Service shall, with the approval of the Secretary of the Treasury, determine in accordance with rules and regulations previously prescribed by such Surgeon General after consultation with a conference of the State and Territorial health authorities, the amount to be paid to each State for such quarter from the allotment to such State, and shall certify the amount so determined to the Secretary of the Treasury. . . .

(d) The moneys so paid to any State shall be expended solely in carrying out the purposes specified in section 601, and in accordance with plans presented by the health authority of such State and approved by the Surgeon General of the Public Health Service.

INVESTIGATIONS

Sec. 603. (a) There is hereby authorized to be appropriated for each fiscal year, beginning with the fiscal year ending June 30, 1936, the sum of $2,000,000 for expenditure by the Public Health Service for investigation of disease and problems of sanitation (including the printing and binding of the findings of such investigations), and for the pay and allowances and traveling expenses of personnel of the Public Health Service, including commissioned officers, engaged in such investigations or detailed to coöperate with the health authorities of any State in carrying out the purposes specified in section 601: *Provided,* That no personnel of the Public Health Service shall be detailed to coöperate with the health authorities of any State except at the request of the proper authorities of such State.

(b) The personnel of the Public Health Service paid from any appropriation not made pursuant to subsection (a) may be detailed to assist in carrying out the purposes of this title. . . .

(c) The Secretary of the Treasury shall include in his annual report to Congress a full account of the administration of this title.

In the deficiency appropriations made by the 74th Congress during its present session, the first appropriations were made in accordance with the provisions given above. Prior to that, however, the United States Public Health Service, to which the task was given of allotting funds to states and of the expenditure of additional money, had prepared a series of regulations. With the coöperation of state and territorial health authorities, Surgeon General Hugh S. Cumming and his staff considered the most useful and practicable ways in which the funds authorized by the Social Security Act might be utilized. It was fully realized by them that sufficient information was not available to determine accurately the special health problems and needs in every community in the United States. Hence the regulations agreed upon by the state and territorial health authorities and issued by the Public Health Service are regarded as more or less temporary. In the meantime, the President allotted to the Public Health Service the sum of about three and a half million dollars from work relief funds for the purpose of making a national health survey and inventory

of health facilities of all kinds throughout the nation. This survey and inventory are now in progress.

It may be of interest to summarize briefly the regulations[5] governing allotments and payments to states from funds appropriated under the Social Security Act for the fiscal year 1936 as an indication of how the federal health authorities propose to expend these funds.

The Social Security Act provided, it will be recalled, for allotments to states of federal grants-in-aid (at the rate of eight million dollars per annum) on the basis of (1) population, (2) special health problems, and (3) financial needs. With respect to population as a basis, allotments are now being made to the several states on a per capita basis amounting to 57½ per cent of the total sum available. The allotments for special health problems, including the training of public health personnel in the states, will amount to 22½ per cent, and allotments on the basis of financial need will be made with the remaining 20 per cent. The regulations also provide that in order to be eligible to receive such allotments, each state "shall present a comprehensive statement of the present organization program and budget for state health work within the state, together with a proposed plan for strengthening or improving the administrative functions of the state department of health and for administration of local health service." It is understood that the Public Health Service will propose standards of organization and qualifications of personnel as recommended by the Conference of State and Territorial Health Officers. Furthermore, before any payments can be made, it was provided that each state health officer shall submit to the Public Health Service the proposed budget for each project, showing the distribution of funds from all sources and the items required from the Public Health Service.

An important provision in the regulations issued by the Public Health Service is that payments from the funds available under the Social Security Act are not to replace existing state and local appropriations. In other words, it is definitely intended that the federal money shall be "new money." Furthermore, the regulations are designed not only to encourage the maintenance of local and state appropriations but also to stimulate increased state and local appropriations for public health. For example, one-half of the payments to states on the basis of population shall be available for payment when evenly matched (dollar for dollar) by existing appropriations; the other half shall be available for payment when evenly matched by new appropriations of public funds for health purposes. The additional provision is made that the part of the funds made available for matching by existing appropriations shall decrease at the rate of 10 per cent per annum on the average, so that after 10 years, the entire fund paid to states on the basis of population shall be matched by an increase in appropriations until such time as an average expenditure of $1.00 per capita should have been reached by local health services within the state.

[5] These regulations have been published in (1936) 26 AM. J. OF PUBLIC HEALTH, 59-62.

When this limit is reached, it will be permissible to match the entire fund with existing appropriations for state and local health services.

The same general provisions govern payments on the basis of special health needs. Special health needs are interpreted to mean "necessity arising out of high morbidity or mortality on a state-wide basis from particular causes, such as malaria, hookworm, bubonic plague, trachoma, typhus fever, special industrial hazards, and similar geographically limited diseases or other conditions that result in inequality of exposure to public health hazards among the states." Under special health needs is also the training of personnel. It is well known that a sufficient number of technically trained persons is not available for rapid expansion of public health work. In fact, those who were responsible for initiating the recommendations which formed the basis of Title VI of the Social Security Act realized that several times the amount authorized could profitably be spent for the prevention of disease if adequate personnel and facilities existed. In the interest of true economy, however, only eight million dollars was proposed, a sum which is relatively insignificant in comparison with federal expenditures for relief, national defense, and other essential purposes. The Public Health Service, recognizing that additional personnel was a special health need, provided in its regulations that 12½ per cent of the total sum shall be set aside for establishing or strengthening suitable training centers and for stipends and expenses of persons who are untrained. This money need not be matched by the state.

Finally, payments on the basis of financial need are being made by two methods. One is a flat allotment of five per cent of the total amount available to the 51 state and territorial health jurisdictions to which the Act applies.[6] For the purpose of assisting the state or territorial health departments and "providing the leadership and administrative guidance necessary for the effective use of federal aid," a payment of five per cent is provided which will not be required to be matched. The second method is by an "equalization fund" of 15 per cent of the total amount available which "shall be expended exclusively for local health services" and which "shall be distributed among the states most urgently in need of financial assistance, the need being determined on the basis of the financial ability of the state as expressed indirectly in terms of per capita income." No requirement for matching these funds is made.

The payments to the states are to be made in such installments and at such times as the Secretary of the Treasury may direct, to the treasurer of the state or other state official authorized by law to receive such funds. Financial reports are to be made to the Surgeon General of the United States Public Health Service as he may require and unobligated balances as of the close of business on June 30th of each year shall be returned to the Treasurer of the United States.

It is difficult at this time to form an opinion as to the consequences of these pro-

[6] The 48 states and the territories of Alaska, Hawaii, and the District of Columbia.

visions of the Social Security Act and of the regulations which have been worked out by the Public Health Service with the state and territorial health authorities. There can be no doubt that a tremendous stimulus will be given to disease prevention throughout the country. In only about 600 of the 2,500 rural counties in the United States does there exist even a skeleton public health organization. Of these less than one-quarter have facilities which are regarded as adequate. As fast as trained personnel can be secured, the Social Security Act will make more health services available to these neglected communities. In hundreds of small towns and cities the health services are inefficient and inadequate; the Social Security Act will supply a stimulus to their improvement. The federal health service itself will be strengthened by additional direct appropriations in its fight against such health problems as malaria and hookworm in the South, in the study of special industrial hazards, and in conducting the basic research necessary for the discovery of practical methods of disease prevention. On the other hand, there will be some who will fear that the Act confers upon the federal government a degree of control of states and localities with respect to public health functions which was not contemplated by the framers of the Constitution. Of course, the framers of the Constitution lived in a day when public health functions of government were never heard of. But the Act itself is based on precedents long established. Frequently in the past the Congress has made appropriations for grants-in-aid to states for public health services. It has more than once given the Public Health Service authority to attack health problems regardless of state boundaries. Furthermore, the regulations governing the use of grants-in-aid to states are not imposed by the federal Public Health Service; they have been worked out in collaboration with the state and territorial health authorities and have been accepted by them. Transcending all possible objections is the fundamental principle which has been reiterated by various Presidents and statesmen, namely that the conservation of vitality and the promotion of health are the first concerns of the State. If the "welfare clause" of the Constitution means anything at all to the average citizen, it definitely may be interpreted to include such direct measures for the preservation of life and happiness of the people as science has proved to be effective.

THE SOCIAL SECURITY ACT AND THE BLIND

Robert B. Irwin* and Evelyn C. McKay†

Special legislation providing relief to the needy blind in the form of direct financial assistance from public funds has about seventy years of history in the United States. The first provision of this type is found in a resolution passed in 1866 by the Board of Aldermen and Board of Councilmen of New York City, establishing a definite procedure for dealing with applications from blind persons for "donations" from city funds. From this early resolution developed the provision in the New York City Charter under which special relief to the blind is still administered.

The first effort at state legislation for relief for the blind was in Ohio, where in 1898 a law was enacted for this purpose, the administration being placed in the hands of the township trustees. This law was later declared unconstitutional, and a new act which replaced it in 1904 was likewise ruled out by the State Supreme Court. Finally in 1908 a law was enacted by the legislature which triumphantly passed the test of constitutionality and established the principle of relief for the blind from public funds.

In the meantime the legislature of Illinois had, in 1903, enacted a so-called "blind pension law," and the precedent of blind relief having thus become firmly established, other states followed, one by one, until, by January, 1935, 26 states and the City of New York had made special financial provision from public monies for their needy blind people.

The theory on which blind relief legislation is based is that blindness itself is a sufficiently well-defined cause of poverty to require special consideration at the hands of the state. The blind people themselves have been especially active in initiating and promoting such legislation since they feel that a special allowance, made in consideration of their handicap, is free from the stigma commonly attached to "poor relief," and moreover that, by the setting up of special administrative provisions, they

* B.A., 1906, University of Washington; M.A., 1907, Harvard University. Director, Bureau of Research, 1923-1929, and Executive Director since 1929, American Foundation for the Blind, New York. Supervisor of classes for the blind and sight-saving classes in various cities of Ohio, 1915-1923. Co-author, *Blind Relief Laws and Their Administration in the United States* (1919), *Blind Relief Laws, Their Theory and Practice* (1929); author of various pamphlets and articles on work for the blind.

† B.A., 1919, University of British Columbia; graduate study, Bryn Mawr College and University of California. Research Agent, American Foundation for the Blind, since 1926; Associate Editor, *Outlook for the Blind,* since 1931. Engaged in industrial management work for two years; work in public health statistics for two years. Co-author, *Blind Relief Laws, Their Theory and Practice* (1929); author of various articles on work for the blind.

are spared the humiliation of investigation by the poor relief authorities who, they feel, do not understand the special needs and problems of blind people.

Some persons hold the opinion that such special allowances are a sort of compensation for blindness and that all blind persons should be entitled to them regardless of need. In this connection the allowance is often termed a "pension." The majority of workers for the blind and many thoughtful blind people, however, oppose this point of view on the grounds that the "pension" discourages industry and tends to pauperize the blind individual and that the taxpayer cannot be expected and should not be asked to contribute to the income of those who can maintain themselves without such assistance. Moreover, to provide a "pension" of adequate amount for all blind persons regardless of need would require such vast expenditures from public funds that the taxpayers would in time rebel and might repudiate the whole idea of special public assistance to the blind. Those who take this position advocate the administration of such special allowances on the basis of need and term them "blind relief."

The terms "aid for the blind" and "assistance to the blind" have not been in common usage in this connection, possibly because of the danger of confusion with another type of state assistance to the blind—namely, the services rendered by state departments or "commissions" for the blind.

SERVICES TO THE BLIND

From the beginning of organized work for the blind in the United States early in the nineteenth century it has been the aim of the friends of the blind to render them self-supporting so far as possible. The first step was the education of the young blind; then the establishment of special workshops where capable blind people were given employment; then the teaching of embossed print and handicrafts to adult blind people in their homes. At first these activities were in the hands of voluntary agencies, financed by philanthropic private citizens, but gradually their usefulness was accorded recognition by the state. In 1906 the first "Commission for the Blind" was established by act of the Massachusetts legislature—a state agency, supported from public funds for the purpose of locating blind persons, providing vocational training and employment for them according to their capacities, teaching them the use of embossed print, and helping the newly-blinded to adjust themselves to their handicap.

This was the beginning of a renaissance of interest in the blind, and, during the next 25 years, 25[1] additional state departments for the blind came into being with powers as broad as those defined above, their purpose being to promote the welfare of the blind as independent, active, participating members of society. The recent depression and the resultant pressure on state legislatures to reduce expenditures, however, temporarily halted the development of this constructive program. Budgets

[1] Two other states (Florida and Nebraska) had passed legislation to establish such state departments for the blind but had made no appropriation.

were severely cut, particularly in some states where the work was in its infancy, and no new commissions for the blind were established in the states which had not previously made such provisions. Yet the needs of the blind people for eye care, employment, and social adjustment were intensified by the depression.

THE DEVELOPMENT OF PROVISIONS FOR THE BLIND IN THE SOCIAL SECURITY ACT

In January, 1935, when the Social Security Act was introduced in Congress, workers for the blind saw, in the section providing federal funds for assistance to states in their programs for crippled children, what appeared to be a solution for this problem of inadequate support for state programs for the social and vocational adjustment of the blind. An amendment to the Act was drafted, which provided for federal funds to the extent of $1,500,000 to be used for assistance to the states for their expenditures for diagnosis and treatment of eye conditions, vocational training, employment, home teaching, and other social service, and for special appliances and equipment used in the education, employment, and recreation of the blind. This amendment was laid before the Senate Finance Committee and workers for the blind united to secure support for it. The Senate Finance Committee, however, incorporated in the Act when they reported it back to the Senate, not this amendment but another (the present Title X) providing $3,000,000 for federal aid to the states in their programs of "aid to the blind," this term being defined to mean "money payments to needy blind persons." Whereas the original amendment had followed closely the wording of the provision for crippled children (Title V, Part 2), the substitute amendment was drafted along lines similar to those of Title I providing old-age assistance, a circumstance which exemplifies the wide difference in the concepts which lie back of the two amendments.

Senator Robert F. Wagner, sponsor of the Social Security Bill, offered another amendment from the floor of the Senate, providing that half of the proposed sum of $3,000,000 be used for reimbursement of state expenditures for "locating blind persons, providing diagnoses of their eye conditions, and for training and employment of the adult blind." This amendment passed the Senate but was stricken out by the Joint Conference Committee of House and Senate to which the Bill was referred. In the final form of the Act the use of federal funds was limited to reimbursements for state programs of blind relief.

This brief sketch of the origin and history of Title X has been presented because of the light it throws on the problems involved in the administration of aid to the blind under the Act. Supporters of the original amendment believe that the primary consideration in the welfare of the blind is their restoration to social and economic independence, either by improvement or restoration of vision through proper medical care, or, if blindness is irremediable, through vocational training, employment, instruction of the adult blind in their homes, and adjustment of the newly-blinded to

their handicap. Financial relief is but one phase of such a program, to be resorted to only as a temporary measure, or when all else fails.

The concept behind Title X, however, is that dependency is the general lot of the blind and monetary relief their primary need.

THE PROVISIONS OF TITLE X

Title X authorizes the appropriation of the sum of $3,000,000 of federal funds for the fiscal year ending June 30, 1936 and, in each fiscal year thereafter, so much as may be necessary for assistance to the states through reimbursement for one-half of the state's expenditures for aid to the blind (but the federal grant shall not exceed $15 on behalf of any one blind person). In order to be eligible for federal funds, a state must have in effect a state program of relief to the blind which is found by the Federal Social Security Board to meet the following requirements specified in Section 1002 of the Federal Act:

"(a) A State plan for aid to the blind must

(1) Provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;
(2) Provide for financial participation by the State;
(3) Either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;
(4) Provide for granting to any individual, whose claim for aid is denied, an opportunity for a fair hearing before such State agency;
(5) Provide such methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board to be necessary for the efficient operation of the plan;
(6) Provide that the State agency will make such reports, in such form and containing such information, as the Board may from time to time require, and comply with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports;
(7) Provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 2 of this Act.

"(b) The Board shall approve any plan which fulfills the conditions specified in subsection (a), except that it shall not approve any plan which imposes, as a condition of eligibility for aid to the blind under the plan—

(1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid and has resided therein continuously for one year immediately preceding the application; or
(2) Any citizenship requirement which excludes any citizen of the United States."

It is of interest to note that on May 17 when the Social Security Act, with Title X included, was reported back to the Senate, 26 states[2] had programs of relief to the

[2] Florida, Indiana, Oklahoma and the District of Columbia enacted blind relief legislation in 1935, which did not take effect until later.

needy blind in effect but not one of these programs met the requirements of the Federal Act. Some were rendered ineligible by the stringency of their residence requirements, some by the fact that the blind relief was administered by the counties without supervision of a state agency, some by the fact that the relief law was not state-wide and mandatory on the counties, some because there was no financial participation by the state. Two states, Massachusetts and Connecticut, in which relief for the blind was administered under a general clause in the law which established the state department for the blind, found that they would be able to qualify by changes in the rules and regulations of the state department; but the remaining 24 state laws required legislative action to bring to them into conformity with the provisions of the Federal Act.

New Hampshire was the first state to take action, and, in June, 1935, (before the Social Security Act had been fully passed by Congress) the necessary amendments to its laws were enacted. Other states, one by one, hastened to make themselves eligible for the anticipated federal aid, either by amending existing laws or by passing new legislation.

On February 12, 1936, one day after Congress had passed the necessary appropriation, 11 states (Arizona, Connecticut, Idaho, Maine, Mississippi, Nebraska, New Hampshire, North Carolina, Pennsylvania, Wisconsin and Wyoming) and the District of Columbia, having had their programs of blind relief approved by the Social Security Board, received their first quarterly allotments.

ELIGIBILITY OF BLIND PERSONS TO RECEIVE AID

It is to be noted that the federal act imposes no restrictions upon the states as to the qualifications for eligibility for the relief grants, except in the case of residence. Each state is left free to establish its own definition of blindness and its own definition of need.

There are wide variations among the various state laws on both these points. The definition of blindness, for instance, ranges from the restricted "not more than light perception," in the Missouri law, to the somewhat general "inability, *by reason of loss of eyesight,* to provide oneself with the necessities of life," which with slight variations, is found in the laws of fifteen states, among them California, New Jersey, and Ohio. In general this phrase is interpreted to mean "20/200 visual acuity or less in the better eye," but its flexibility permits allowance to be made for those whose visual handicap is due to restriction of the field of vision rather than to loss of visual acuity.

The differences in definition of need are even more striking. While more than half the states define need in general terms such as "inability to provide oneself with the necessities of life" there are a few notable exceptions. Some states define a needy individual as one whose yearly income is less than a specified amount. The Pennsylvania law of 1935, for instance, provides that any blind person whose annual income

is less than $840 shall receive an allowance of $360 a year, and any blind person whose income exceeds $840 shall receive a grant sufficient to bring his total annual income up to $1,200 per year. While this is the most liberal income allowance provided for in any of the states, a number of other states have adopted the same principle of defining need in terms of income.

In this connection should be noted the differences in the amounts of relief grants to be paid. While most states provide that the amount of the allowance shall be adjusted to the needs of the individual, with specified maximums ranging from $150 to $600 per year, three states (Illinois, Missouri, and Pennsylvania) specify in their laws the amount to be granted ($300 to $365 per year) to all eligible applicants alike, without regard to need.

These variations in definition of blindness, definition of need, and principle of determining the amount of the grant will doubtless be reflected in the relief expenditures for the various states, but it is not yet possible to foretell what administrative problems will result from this situation. Although the Social Security Board has power to supervise to a certain extent the administration of the state plans, it has no power to require changes in the state requirements for eligibility, and it may be that the lion's share of the federal funds will go to those states which expend the greatest amount for blind relief, not to those which, through administration on a case-work basis, are striving to provide adequate relief at reasonable cost.

RECOMMENDED BLIND RELIEF LEGISLATION

After observation of the experience of the various states in administering their blind relief laws during the past thirty years, many workers for the blind have come to believe that blind relief is most satisfactory when it is administered by a state agency as part of the total program for the welfare of the blind. This makes it possible to utilize the relief grants as supplementary aid during a period of vocational adjustment, to restore to the sighted world and to economic independence many who are unnecessarily blind through ignorance or neglect, and to prevent the abuse of the relief law by those who could, if they would, support themselves by their own efforts. Relief administered independently of such a program tends to pauperize the blind, to discourage industry and to add to the relief rolls many who need not be receiving public assistance.

Other provisions which experience has demonstrated to be desirable in a blind relief law are:

Administration by a state agency to insure uniformity of policy;

Partial financial responsibility by the counties to ensure local interest and a feeling of responsibility for the blind in the community;

Administration on a sliding scale on the basis of individual need, to ensure adequate provision for those who have no other resources and at the same time prevent an undue burden on the taxpayers;

A flexible definition of blindness which can be interpreted on the basis of the practical usefulness of any remaining vision rather than on a hard-and-fast measurement of visual acuity;

The use of relief funds for restoration of vision or for vocational training in order to reduce dependency wherever possible.

None of these recommendations are inconsistent with the requirements of the Social Security Act, except for the fact that federal funds cannot be used to reimburse grants made for medical service or vocational training.

Relation of Aid to the Blind to Other Types of Special Allowance

There is unfortunately a disposition on the part of legislators and public welfare officials to regard the dependency of the blind as comparable to the dependency of the aged or of widows and orphans, and to administer all three types of special allowance in the same department. The fact that the Social Security Act makes specific provision for all three types of aid in almost identical terms increases this tendency, for in the scramble for federal funds it is obviously easier to draft and enact one state plan which meets the federal requirements than to develop three separate plans individually suited to the needs of the respective groups.

The fallacy of this procedure, however, is apparent to those who are familiar with the problems of blind people. For the aged the hope of regaining economic independence is very slight; what they desire is an allowance which will provide the maximum of security for their remaining years. For widows and orphans the acute need is usually temporary, and aid will be required only until the children attain adulthood and take their normal places in the economic world.

The blind, however, are a heterogeneous group in which are included representatives of all age groups, and all levels of ability. For a large proportion of them the regaining of economic independence is possible provided they have the necessary training and assistance in adjusting themselves to their handicap. They are not necessarily permanent dependents like the aged except when age or ill-health combines with blindness to make them so; nor are they temporary dependents, as are orphans who in a few years achieve maturity and take their normal places in the economic world. The truth is that whether the dependency of the blind is permanent or temporary depends upon the extent to which special services for medical care, education, and vocational adjustment are available to them in the community.

Any plan for the administration of blind relief which fails to take into consideration these factors can only increase dependency and stultify initiative.

The friends of the blind are therefore hoping most urgently that the new state plans for aid to the blind will be developed in close coördination with a constructive program for the blind, preferably by placing the administration in the hands of a state department responsible for all phases of the welfare of the blind, or, where this is impossible, establishing an active inter-relationship between the relief division and the state department for the blind.

Since fifteen states have no state-supported work for the adult blind, and in several others the financing of such work is highly inadequate, the problems involved in setting up such relationships are serious. Yet the extension of such constructive services as a complement to the blind relief program is essential if the blind citizens of these states are not to be condemned to lives of idleness and listless dependency by the very law which sought to help them.

In conclusion it may be said that the aid to the blind, provided by the Social Security Act, will bring great benefits to thousands of blind people throughout the country, particularly in those states where heretofore no legislative provision for blind relief had been made or where local funds have been inadequate for the purpose. But, if the result of this federal aid is to discourage the blind from efforts to be self-supporting, to deter employers from employing capable blind persons and to produce in the minds of the seeing public the false impression that "the blind are now taken care of," the Act will do more harm than good. It is to be hoped that those in charge of public policy will recognize the program of federal aid for what it is—the *first step* in developing a well-rounded program for the welfare of the blind—and will shape federal and state plans accordingly, to the end that the blind people of this country may take their proper places as independent self-respecting members of the community.

PUBLIC WELFARE ADMINISTRATION UNDER THE SOCIAL SECURITY ACT

Fred K. Hoehler*

The administration of public welfare during the depression has been referred to as "America's leading industry": a caustic paradox which may serve at least as a starting point for better understanding of some recent developments in this field.

Industry expands during prosperous years. The business of caring, at government expense, for those who need help expands when hard times come upon us. The expansion of industry is hopefully anticipated. The expansion of our public welfare services is too often forced upon us by adversity and finds us unprepared. Everyone hopes that prosperity will endure. Everyone hopes that adversity will be short-lived. Both have their popular slogans, but the catchwords of a business boom are carefully planned to intrigue the public fancy, while the phraseology of welfare administration is wrung from the popular need.

Such a phrase is "social security," a recent addition to the vocabulary of every political unit in the United States. To the great majority it is still only a phrase with little realization of its significance either to the administrators who use it or the communities they serve.

One more up-side-down comparison before we leave this introductory thought: the expansion of private industry has a minimum of dependence on our local, state or national statutes, modified and regulated though it is by all three; but growth in public welfare service must wait for the official sanction of legislative bodies, and is rooted and grounded in the law. It cannot be coördinated, it cannot be planned on a national scale, until our local, state and national law is so coördinated and so planned.

At the beginning of the depression our local public welfare law, from coast to coast and Canada to Mexico, was a curious growth of tradition and expediency. Ancient customs and precedents, brought from older countries and planted in forty-eight states, had taken root, grown, or lain dormant in an amazing diversity of patterns. Uniformity there was none. "Adequacy" depended on climate, culture,

* B.S., 1915, Pennsylvania State College. Director, American Public Welfare Association, since 1936. Director of Public Welfare, Cincinnati and Hamilton County, Ohio, and Director of Safety, Cincinnati, 1928-1935. Lecturer on Public Welfare Administration, University of Chicago, since 1936. Lecturer on Public Administration, University of Cincinnati, 1930-1935. Contributor to periodicals.

racial or religious influence, that educational intangible loosely called "social mindedness," and many other factors.

We have just lived through one of our periods of expansion in public welfare service. The widespread unemployment of the past five years has forced new developments unparalleled in the history of the United States. Because of the severity of this depression, and the suddenness with which it came, emergency acts in every part of this country have created new state and local bodies for the administration of relief. Many of these bodies were literally built overnight, in response to desperate need which everyone hoped would be brief. The duration of the crisis, and its national scope, at length compelled federal action, first by the Reconstruction Finance Corporation and later by the Federal Emergency Relief Administration. Policies and procedures were dictated from above, and a national plan was created by emergency legislation, using local machinery wherever possible and creating new machinery wherever necessary for the distribution of what would, in any other age, have seemed fantastic sums of money in the care of hosts of American citizens.

Considering the chaos out of which this plan evolved and the swiftness with which it was constructed, the result—on the whole—has been surprisingly orderly and efficient. Considering that it was superimposed from above without time for the slow processes of education to create popular support, no one could believe that it would be anything but temporary.

The Federal Social Security Act is a recognition by our national government that the emergency is passing. It is an admission that public welfare services are a necessary and permanent function of the federal government. It is a step toward national uniformity, adequacy, and coördination.

Federal Aid Is Not New

There is no radical departure from precedent in the assistance titles of this Act. The aged, the blind, dependent children and their mothers have long been the wards of state and local governments. Maternal and health care are accepted responsibilities of the public servants who administer our taxes. Grants-in-aid by the national government to the several states are not new. Federal funds have been made available to highway departments, school systems and other educational institutions on the basis of qualified service and personnel. Every motorist who crosses a state line on a federal highway can testify to the convenience and comfort of this well-established principle. Every child who has been trained in an educational institution participating in the system is another witness for the success of such federal-state partnership. Indeed, we have recognized the premise so thoroughly that we have forgotten it, and now take it as a matter of course.

In the assistance phases of the Social Security Act, the same principle is merely expanded to include welfare services which local communities cannot possibly meet because of the increasing need for public aid and the inadequacy of both local funds

and local channels of government through which funds may be efficiently administered.

For the reasons stated at the beginning, and for many other reasons, public welfare administration as a coördinated function of state governments has been woefully neglected. In spite of steadily increasing appropriations for welfare and relief, we have, as a nation, disregarded this type of intelligent planning. Sound policies and wise administration are so rare in the coast-to-coast picture that they stand out, here and there, as shining examples. The prevailing feeling of the general public is that the care of those in need can be carried on *by government* as it was formerly in much the same way that it is administered by lodges, churches, and the more rudimentary forms of private charity. The huge sums now being spent for these purposes place obligations on the state far beyond such sporadic and hand-to-mouth efforts.

Administrative Requirements of the Federal Act

Few of our states are now eligible for the benefits conferred by the Social Security Act, as interpreted by the Social Security Board. New legislation, everywhere, is being planned or passed to qualify for these benefits. Public officials from coast to coast are asking in honest perplexity, what must be done to secure the best results in serving those who have been promised "social security."

To this question the Social Security Act itself does not afford a complete answer. In its provisions for grants-in-aid to states for old-age assistance, for aid to dependent children, maternal and child health services, and to crippled children, and aid for child-welfare services, the Act stipulates among the conditions on which these grants will be given requirements which relate to administration,[1] but these requirements are couched in very general terms. A survey of these provisions will illustrate this fact.

a) In all these titles there is the requirement that the state plan provide either for its administration by a state agency or for the supervision of its administration by a state agency. In Titles I, IV, and X, relating to old-age assistance, aid to dependent children, and aid to the blind, respectively, the state agency is not designated beyond the requirement that it be a "single" agency.[2] Under Part I of Title V providing aid to maternal and child health services, the agency must be "the State health agency";[3] in Part 3 of that title providing aid to child welfare services, reference is made to "State public-welfare agencies."[4] No specification of the character of the

[1] Title VI, "Public Health Work," of the Social Security Act, 49 Stat. 620 (1935), in providing in §601 an appropriation of $8,000,000 "for the purpose of assisting states, counties, health districts," etc., "in establishing and maintaining adequate public-health services, including the training of personnel" does not provide the apparatus of conditions to be met by state plans. However, the money paid to any state must be expended "in accordance with plans presented by the health authority of such state and approved by the Surgeon General of the [Federal] Public Health Service." *Id.* §602 (d). The power to withhold approval of state plans gives to the Surgeon General some control over state administration.

[2] Social Security Act, Tit. I, §2 (a) (3); Tit. IV, §402 (a) (3); Tit. X, §1002 (a) (3).

[3] *Id.*, Tit. V, §503 (a) (2). Presumably this agency would be the same as "the health authority" referred to in Title VI. See note 1, *supra*.

[4] *Id.*, §521 (a).

"state agency" is made in Part 2, providing aid to services for crippled children.[5] In Parts 1 and 2 of Title V special provision is made for "coöperation with medical, nursing and welfare groups and organizations"[6] and, in Part 2, "with any agency in such State charged with administering State laws providing for vocational rehabilitation of physically handicapped children."[7]

b) In Titles I, IV, and X, it is required that the plan adopted "be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them."[8] No such requirement is made in Parts 1, 2, and 3 of Title V providing grants-in-aid of maternal and child health services, services for crippled children, and child welfare services respectively. Instead, in Parts 1 and 2, the purpose of the grants is specified to be for the aid of the state services "especially in rural areas and in areas suffering from severe economic distress."[9] In Part 3, aid to "predominantly rural areas" is specified as the purpose, although expenditures in "other areas of special need" are also authorized.[10]

c) The plans for old-age assistance, aid to dependent children, aid to the blind, aid to maternal and child health services, and aid to services for crippled children must provide "methods of administration (other than those relating to selection, tenure of office, and compensation of personnel) as are found by the Board[11] to be necessary for the efficient operation of the plan."[12]

d) The plans for the services listed in the preceding paragraph must also "provide for the making of reports" by the state agency "in such form and containing such information as the Board[13] may from time to time require, and comply with such provisions as the Board may from time to time find necessary to assure the correctness and verification of such reports."[14]

The generality of the statutory requirements, coupled with the power of the federal administrative body to withhold approval of state plans or to withdraw approval when it is found, after notice and hearing, that a state has failed "to comply substantially" with any of these requirements "in the administration of its plan"[15] results in a broad grant of discretionary power to the federal agencies, but it is to be presumed that in its exercise a wide range of choice will be left to the states.

Especially in the matter of personnel, much latitude of choice is conferred on the states by the Social Security Act. With this latitude goes a heavy responsibility, since it is axiomatic that a sound personnel policy is essential to administration that

[5] *Id.* §513. [6] *Id.* §§503 (a) (6), 513 (a) (6). [7] *Id.* §513 (a) (6).

[8] *Id.*, Tit. I, §2 (a) (1); Tit. IV, §402 (a) (1); Tit. X, §1002 (a) (1).

[9] *Id.* Tit. V, §§501, 511. [10] *Id.* §521.

[11] In the case of services for maternal and child health and crippled children, the Secretary of Labor.

[12] *Id.*, Tit. I, §2 (a) (5); Tit. IV, §402 (a) (5); Tit. X, §1002 (a) (5); Tit. V, §§503 (a) (3), 513 (a) (3). In clause (6) of the paragraphs in Titles I, IV, and X cited above, there is the further requirement that the plan "provide for granting to any individual, whose claim with respect to [the aid given thereunder] is denied, an opportunity for a fair hearing before such State agency."

[13] See note 11, *supra*.

[14] *Id.* Tit. I, §2 (a) (6); Tit. IV, §402 (a) (6); Tit. X, §1002 (a) (6).

[15] *Id.* Tit. I, §4; Tit. IV, §404; Tit. V, §§505, 515; Tit. X, §1004.

will protect both public funds and the human beings for whose benefit they are to be used. Careless and inadequate administration or a poor selection of personnel by state and local governments may easily wreck the entire system. Honest officials, sincerely anxious for its success, would do well to observe carefully the suggestions of the Social Security Board on administrative policy.

The First Step

Where regular departments of government exist to which the new social security functions may be delegated, the obvious first step is to employ them. When there are no such departments as permanent parts of a state set-up, they should be created and empowered to administer these welfare activities. It is hazardous and extremely unsound to relate such services to any emergency administration which, by its very nature, cannot be expected to provide continuity of service and personnel. These new activities in the public welfare field are one of the largest and most important responsibilities of present and future government. The size of the job, the amount of money involved, the millions of men, women and children to whom even partial "security" is promised, and the army of employees to be enlisted in these services create a problem which demands trained and efficient personnel and the assurance of continuing policies in the conduct of public departments. Good civil service or a merit system should be invoked before appointments are made, and so far as possible all the functions of state government in the welfare field which deal with the federal government should be centered in one department or under one administrative head.

A few years ago we heard much bitter criticism, from the opponents of such legislation, about social security administration in Europe. We hear less today, perhaps because it has not only weathered the depression, but come through it with improved standards. Russia is, of course, the outstanding exception; but the abolition of social insurance in Russia can hardly be laid at the doors of the depression.

The reason for this achievement in England, France and Germany is that from the beginning administration of these measures has been non-partisan, efficient and carried out by carefully selected personnel. In the United States, unfortunately, thirty-eight states are still in the clutches of the spoils system. Wherever political influence is strongly felt we may expect, and we uniformly find, frequent changes in personnel and low standards of administration.

Any intelligent layman can see the dangers of political domination in this most human form of government; but so far, in this country, the forces of greed and the possibilities of patronage have won the day. The inertia of the general public is partly to blame. An alert and vigorous effort must be made by good citizens everywhere to safeguard administrative standards if the whole social security program is to be protected from devastating sabotage by rival political groups.

STATE ADMINISTRATION

Legislative provision must reinforce public opinion in a determined campaign to protect this program. Previously in this article it was suggested that all the assistance phases of this act should function through one governmental department. Necessarily, this department should be built into the regular governmental structure, but it should have the additional protection of laws which provide for a board with overlapping terms of service. In this way continuity of policy and procedure can be assured.

Committees and commissions of laymen and public welfare officials in many states are giving serious attention to the type of permanent organization which should succeed the emergency program. The Sherrill Committee in Ohio and the New York Commission appointed by Governor Lehman have made detailed reports which include thoughtful recommendations on administration and personnel.

In Ohio, the Sherrill Commitee, after a thorough discussion of the subject of an administrative board for the State Department of Public Welfare, decided to recommend a board with advisory powers. The report states;

"To overcome possible political exploitation of the office of Director or Commissioner of Welfare, many well-informed persons contend that a board rather than the Governor should be given the power of appointment. This has been highly effective in some states as a bulwark against politics.

"This method of appointment, however, has its disadvantages. Experience has shown that it is quite possible to get a poorly qualified board. In such case a governor, however desirous of improving the situation, is handicapped in replacing an incompetent department head.

"The board plan, furthermore, while it may succeed in keeping in office a department head well qualified for his duties, may at the same time handicap the Department from the standpoint of securing the active interest of the Governor and in securing for the Department a fair consideration of budget requirements."[16]

In New York State, the Commission on State and Local Relief Policy appointed by Governor Lehman has assumed practically the same position. It is felt by both these bodies that the most advantageous arrangement would provide a board with advisory or limited administrative powers. Both commissions also recommend that the Director of the State Department of Public Welfare should be appointed by the Governor.

The Sherrill Committee has this to say in reference to the Director:

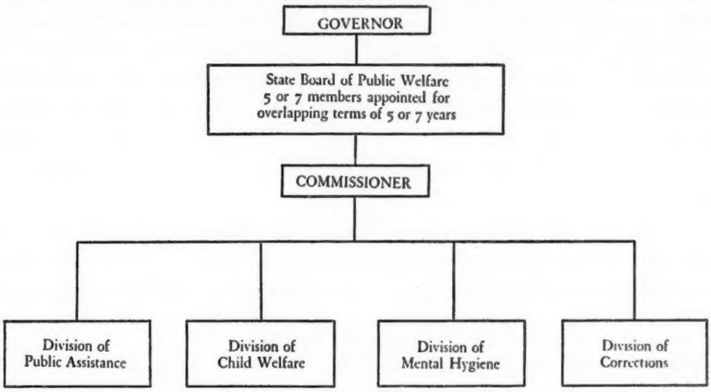
The Director should be a person of wide and successful experience as an executive in the field of public welfare. He should be a student of social problems and have a good general understanding of the nature, significance and control of the large social problems which constitute the responsibility of the Department. A number of different professions are engaged in carrying out various phases of the work of the Department and the Di-

[16] Committee on Dep't of Public Welfare (Samuel Ash, Chmn.), *Organization and Personnel of State Department of Public Welfare; General Recommendations*, in OHIO STATE GOVERNMENT SURVEY (1935) (Col. C. O. Sherrill, Dir.) p. 4.

rector (and also the Assistant Director) should understand how to utilize and focus the services of these various professional groups in order to deal most effectively with the social problems involved.

"The Committee is fully in accord with the viewpoint that the head of the Department should be appointed and tenure of office on a merit rather than on a political basis. This survey has revealed in no uncertain terms that political appointments in the Welfare Department have sacrificed the interests of thousands of helpless wards of the state."[17]

A suggested plan for the organization of a State Department of Public Welfare, prepared by the American Public Welfare Association, is presented below:



Competent Personnel

The question of whether the board should have advisory or administrative powers may still be open to debate. Public officials have not yet come to a unanimity of opinion on this point. There is, however, no room for question as to its responsibility for establishing standards of administration, continuity and adequacy of service, and excellence of personnel. These are matters of such vital importance that they must be in competent hands. Returning, for a moment, to the quotation with which this article began: it is at least as important—to many of us it seems more important—that public servants employed to administer public funds in aiding those of our citizens who ask assistance from the government should be chosen with the same care that is used in staffing a bank or a large insurance company. "America's leading industry" might well follow the example of successful administrators in private business, where keen competition ensures meticulous attention to the choice of personnel.

Competence at the top means efficiency in the ranks. Only staff members equipped with adequate education and seasoned by experience can give constructive supervision to local departments. Although much of the present hostility toward college graduates and trained workers can be dismissed, in a pre-election year, as a political smoke screen, and although much of it is a natural reaction of local com-

[17] *Ibid.*

munities to a program which was born of their adversity and superimposed from outside and above without opportunity for building a background of wise interpretation to assure local support, it is disheartening when governors and influential politicians resort to the political trick of echoing such sentiments. They require the services of specialists in medicine or the law for their physical ailments or legal problems. They employ engineers to build their bridges, architects to design their homes, and experienced plumbers to replace a leaky faucet. They demand schooled tree surgeons to amputate dead branches and cement cavities in oaks and elms. But they complacently allow huge sums of money to be distributed for the relief of distress by political henchmen who know nothing of the intricate and delicate business of repairing broken lives, sustaining courage, and rebuilding self-respect. Not only the efficient and economical expenditure of public funds, but the service of human need demand, for this task, a carefully selected specialist. For it, we should choose men and women who have great human sympathy and understanding—and more: intelligence and skill which only comes through adequate training and experience.

It is imperative that the state administration be empowered not only to establish and maintain its own personnel standards through civil service or the merit system, but to prescribe qualifications for personnel in the county, township or parish units.

Records and Reports

Accurate, complete and up-to-date records and reports of expenditures are certain to be one qualification demanded by the Social Security Board of any state benefiting under this act. From the smallest political unit up to the State Department of Public Welfare, no effort should be spared to have this part of the work done promptly and well. Nothing less than the best system of record keeping will ensure economy of operation and the elimination of possible waste.

But the most complicated system of record keeping is not the best. It may be the worst. Many fine experiments have failed because of unnecessarily complicated forms, reports and procedures, in the hands of stupid or untrained people. Again, in this instance, administrators must find and employ intelligent and experienced people. Records should be both simple and complete. The American Public Welfare Association has drawn up suggested forms for the use or adaptation of administrators in local units as well as state departments. Carelessness or neglect of these details in local units mean waste, delay and inefficiency higher up. The state administrator should be able, and should have the power, to establish rules for procedure, recording, the use of uniform record forms and the regular and prompt auditing of expenditures.

Local Administration

The nation-wide trend of thought among public officials is now toward local administration of funds, under state supervision. There is a decided preference for "home rule" rather than direct administration by the states. There are distinct advantages in this plan. One of the weaknesses of our emergency set-up has been the

lack of local interest in and local responsibility for plans superimposed from above. If funds are administered by small political units, understanding and interest are bound to increase. The state may still control or supervise. It may even be empowered with such authority as that recommended by Governor Lehman's New York Commission:

"The powers of the State Department and State Board . . . should include the power to make rules and regulations for the administration of home relief: the power to pay part of the salary for qualified local welfare personnel and the power to withhold state funds unless rules and regulations of the State Board are complied with."[18]

What political division should be chosen for local administration? In some states counties do not exist. In these the city or town must, of course, be the unit. But both the Sherrill Report in Ohio and the Governor's Commission in New York recommend the county as the logical political division for administrative purposes. To quote again from the New York Commission, it believes:

"The rôle of the town to be constantly diminishing in relief administration. Many welfare services have already been transferred from a town to a county basis and are being provided by a county wide staff of employees.[19]

"Relief administration in the towns is far from satisfactory from the viewpoint of either the relief recipient or the tax payer.[20]

In the field of county relief administration, the Commission urges that county directors of public welfare be appointed instead of elected."[21]

This point of view is reinforced, in the New York study, by a discussion of the political machinations to which relief officials often resort when seeking reëlection. We blame the official, in such cases, rather than the system which makes it difficult for him to act otherwise. Our present system has evolved slowly. It grew without plan or premeditation. We have now an opportunity to revise it. In framing our new welfare laws, can we not evolve a plan which will make it easy rather than difficult for public officials to be ethical, impartial and efficient?

Whatever the local unit, all the welfare functions should be centered in a department of public welfare, which should consist of a board with either advisory or administrative powers.

There are many arguments which might be advanced for county boards with advisory powers only, or with limited advisory powers. But to the writer of this article it seems that a local board, close to the work that is being done, might well be given more complete administrative authority than a state board which would necessarily be removed from the scene of action. The county board might even appoint its own director. Local interest everywhere needs building up, and interest goes hand in hand with responsibility. If adequate supervision is given and standards are maintained by the state authority, we need not be too fearful of the decentralization of administrative powers. Whatever the authority of the county board,

[18] Governor's Commission on Unemployment Relief, *State and local welfare organization in the State of New York* (1936) p. 65.

[19] *Id.*, pp. 71-72.

[20] *Id.*, p. 74.

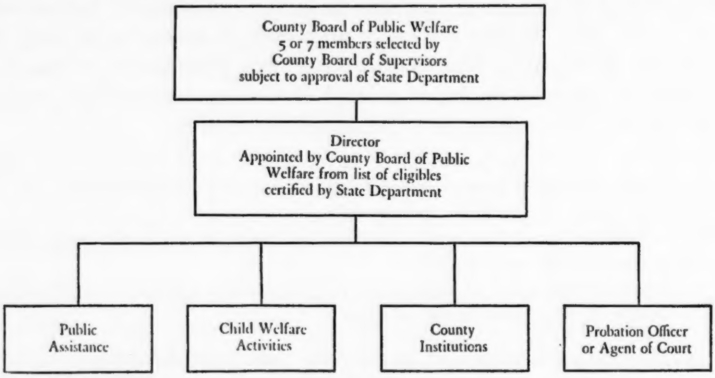
[21] *Id.*, p. 81.

it should be appointed, and the terms of its members should overlap. This is the only way in which continuity of policy can be assured.

The Governor's Commission in New York recommends:

"The County Commission of Welfare should be appointed by a majority recorded vote by the County Board of Supervisors. . . . In counties having an administrative head such as a county president or manager, the County Welfare Commissioner should be appointed by this chief executive."[22]

A suggested plan for the organization of a County Department of Public Welfare, prepared by the American Public Welfare Association, is presented below:



CONCLUSION

The Social Security Act offers tremendous possibilities to the American people. Its strength or its weakness will depend on its administration. Its success depends on coöperation up from the smallest political units in remote corners of this country through the administrative machinery of forty-eight states to the Social Security Board in Washington. With sound administration, it will mark the greatest single advance in social legislation ever made in this country. Without sound administration, more money may be wasted under this act than ever before in the history of the United States.

Much latitude is left to the states, and we shall see experimentation with various methods. But in spite of our wide range of climate, culture, tradition and educational advancement, our brief experience under the Federal Emergency Relief has taught us that basic uniformity is possible on a national scale. Unless we insist upon intelligent, skillful personnel; unless we safeguard honest and efficient administration, our descent from the heights we have painfully reached in the passage of this act will be swift and terrible. If this tremendous experiment fails the hope of millions of helpless people will be betrayed, and "social security" in this country will be a dream we failed to realize.

[22] *Ibid.*

FEDERAL GRANTS AND THE PROBLEM OF FINANCING PUBLIC ASSISTANCE

George A. Shipman* and Harold J. Saum†

I

The "emergency" is over. At least official pronouncements have repealed it in authoritative terms, citing statistics for nation-wide employment that somehow cannot blind even the casual observer to the poignant need on every hand. No longer will federal emissaries visit the "provinces" redoubling their demands for state relief money, to the mingled anger, chagrin, and amusement of local administrations. No longer will states find protection in the haggling methods of the horse-trader, nor will emergency preambles be either appropriate or sufficient to soothe the harassed citizen into new measures of taxation. From the federal standpoint the tapering-off process is well under way. But in the states and local units there is, in all too many instances, a definitely increased relief cost, and with it a prolonged *fiscal* emergency.[1]

The demobilization of relief is being done according to a plan, despite the impossibility of fitting the jigsawed segments into a complete picture. At the moment the federal government has ceased its grants for general relief and confines its expenditures to work projects for unemployed persons. Other problems of dependency have been treated in one way or another by the Social Security Act; still others have been left to whatever resources the separate states and their local units can devise.[2]

* B.A., 1925, M.A., 1926, Wesleyan University; Ph.D., 1931, Cornell University. Research Associate, Princeton Local Government Survey. Instructor in Government, Cornell University, 1927-1930; Assistant Professor of Political Science, 1930-1935, Associate Professor, 1935, West Virginia University. Research Associate, Bureau for Government Research, West Virginia University, 1930-1935. Consultant, Legislative Committee on Efficiency and Economy, West Virginia, 1933. Technical Consultant to the Governor of West Virginia, 1933-1935. Consultant, Legislative Committee on Social Security Legislation, 1936. Staff member, Committee on Economic Security, 1934.

† A.B., 1923, West Virginia Wesleyan College; M.A., 1927, LL.B., 1929, West Virginia University. Research Associate, Princeton Local Government Survey. Member of the West Virginia Bar. Field Investigator, Commissioner on Law Observance and Enforcement, 1930-1931. Instructor in Law, College of Law, West Virginia University, 1934. Research Assistant, Bureau for Government Research, West Virginia University, 1934. Instructor in Political Science and Research Associate, Bureau for Government Research, West Virginia University, 1935.

[1] For a revealing survey of the heavy relief burden placed upon state and local shoulders, see American Association of Social Workers, *A Survey of the Immediate Relief Situation in Twenty-five States*, (New York, 1936).

[2] See Rubinow, *The Social Security Act: An Appraisal* (March 1936) 35 Nat. Mun. Rev., 138; Shipman, *Planning the Care of Unemployables* (Jan. 1936) 35 *id.* 7-11, 22. See also Legal Research Section, Works Progress Admn., *Legislative Trends in State and Local Responsibility for Public Assistance* (Washington, D. C., March 1936).

To see the fiscal needs of state participation in those activities that are aided by the Social Security Act as an independent problem, is to disregard other equally insistent human needs.[3] A rough approximation indicates that fully one-third of unemployable persons including the ill and large classes of the physically handicapped are not touched by the new act. At the same time the postulate that the states need care only for their unemployables because federal work programs provide for those able to work has yielded many contradictions. Employable persons have been refused jobs because allotments were exhausted; no provision was made for increased case-loads during winter months; and, in some states, pay was so low that supplemental relief was necessary to prevent undernourishment in many families.[4] At best it appears that the widely-heralded federal aid can reach only a fraction of the total number of persons who are dependent upon state and local government for their subsistence.

The needs of emergency relief called forth nearly every type of unsound financing. Heavier taxes were piled upon struggling business, and upon falling personal income. Bond obligations were contracted to supply current needs. Reserve funds were depleted and dedicated revenues were diverted. The consequence is a mad scramble of permanent, temporary and emergency adjustments, accumulated claims due pension funds, and bonded debt without capital security.[5]

Meanwhile other fiscal needs have gone on as always. Current services have been pruned, essential repairs postponed, and capital replacements suspended during the emergency period. These essential requirements cannot be held off indefinitely; in fact sound public administration demands that they be met to protect the investments of generations. At the same time, the warning is sounded that the heroic measures of relief financing were only a prelude to a permanent provision for welfare requirements that, for the time being at least, cannot be expected to fall far below depression needs.

It appears that, perhaps in all states, a definitely increased permanent revenue

[3] For discussions of the general problem, see Shipman, *The Care of Unemployables in West Virginia* (1935); New Jersey Conference of Social Work, *A Plan for a Coördinated and Permanent Public Welfare Department* (Newark, N. J., Feb., 1936).

[4] See note 1, *supra;* and study made by Catherine M. Dunn, reviewed in (March 1936) 14 TAX MAGAZINE 187.

[5] In the "mad scramble," all conceivable state, county and local sources were "tapped" or created for relief financing. Significant examples follow:

State: general revenues; liquor funds; road and highway funds; motor registration and license fees; bonds and notes; transfer from public school equalization fund; surplus funds of Teachers' College; seed loan funds; horse racing fees; salary cuts; departmental funds; Teachers' Pension and Annuity Fund; sinking fund; income, inheritance, corporation, sales, luxury, gasoline, chain store, and numerous other taxes.

County: general fund; loans; bonds; highway funds; sheriff's fees and charges; sales, property, income, inheritance and other taxes.

Local: available funds; loans; bonds; public funds transfer; advertising, amusement, gasoline, property, and other taxes.

For complete details, see Federal Emergency Relief Administration, *Digest of State Legislation for the Financing of Emergency Relief*, MONTHLY REPORT (May 1935).

program will be essential. This means the restoration of trust funds to actuarial solvency, the liquidation of bonded relief debts, and the readjustment of diverted revenues. The short-sighted fiscal expedient of robbing Peter to pay Paul will end with the taxpayers' paying both Peter and Paul, and with interest added.

Where "temporary" and "emergency" taxes were imposed to meet the costs of dependency the taxpayer will probably have to accept these fiscal stepchildren as permanent boarders at the family table. In brief, emergency financing solved no problems. It merely postponed them and by doing so often confused them as well. Thus it happens that adjusting public assistance to a permanent status, even though state and local expenditures for these purposes may not be increased, will mean in many cases a patient untangling of badly snarled finances.

II

Can the states and their subdivisions pay their share of the costs of the services aided by the Social Security Act? If this question could be isolated and answered directly there would be fewer perplexities, but only by assuming artificial simplicities, can such certainty be risked. On the side of cost the federally-aided services are inextricably interwoven with all the other welfare activities of the states, and on the side of support they are only a few of many urgent demands upon public treasuries.

The lure of federal funds places a disproportionate emphasis upon the formalization of the aided services. The states' task is not simply to provide continuing and adequate care for the aged, the blind, the dependent children, and to fortify ancillary child welfare, maternal and child health and public health activities. The problem is rather to evolve a comprehensive, well-balanced public welfare program that will displace outgrown attitudes and methods of poor relief; that can reach the problems of dependency where and as they exist; and that can draw upon fiscal capacities that are most nearly adequate to afford effective services. The problem, though largely one of administration, is a fiscal one as well— the methods of financing are so intertwined with those of administration that the two become inseparable.

As the federally-aided services get under way, a considerable momentum, inevitably accumulating, will force constantly increasing expenditures. As a definite type of need is recognized, its treatment formalized, and the diminishing stigma of "poor relief" is removed by the gratuity of "pensions," mounting costs are certain. Apart from purely social implications this trend augurs a demand for public funds that may seriously stunt the development of adequate fiscal support for the entire welfare program.[6]

Further, there is the question of the sufficiency of federal aid. Although the financial need of the recipient states is to be taken into consideration in the allocation of part of the appropriations under Title V providing for maternal and child-health services and aid for neglected children and under Title VI for aid to public-

[6] Pertinent is the statement of Murray Latimer, Hearings before the House Committee on Ways and Means on H. R. 4120 (Economic Security Act) 74th Cong., 1st Sess. (1935) at pp. 219 *et seq.*

health services,[6a] the grant-in-aid titles of the Social Security Act which will entail the largest financial outlay, *viz.* Title I providing for old-age assistance, Title IV, aid for dependent children, and Title X, aid for the needy blind, authorize federal appropriations only on a matching basis. The matching basis, whether dollar for dollar or one dollar for two, is still no important advance beyond the methods of previous federal grants, and the more conventional devices used by states for the distribution of funds among their subdivisions. As an effort to supplement state resources the proportional grant has the pronounced weakness of supplying additional funds in direct relation to the amounts available in the states. Such a method neither equalizes state capacities in any significant manner, nor takes cognizance of the potential need for services within the states, unless, of course, the relative amounts of state appropriations are themselves to be regarded as fairly accurate measures of the relative need for service.

As a general rule the matching grant (up to the stated maxima), does nothing to equalize the conditions of those states that are scarcely able to furnish even a modest amount of assistance, with those whose aid payments were maintained upon a reasonably adequate level before the enactment of the Social Security Act. The reliance upon a straight matching basis, as the measure of federal grants, precluded the initiation in the field of public care of methods of fund distribution similar to those developed with success in England, and to those attempted, though in an opportunistic and disorderly way, by the Federal Relief Administration.[7]

The shortcomings of the matched grant are of fiscal importance because they offer little help to the state legislators who are soberly inspecting the figures for caseloads and present state taxes and are wondering how, with no more than a direct matching of state appropriations, the cost of dependency can be met in any important way. A desire to increase state resources to the utmost by realizing upon the maximum of federal aid defeats its own purpose by concentrating state outlays upon only a phase of the entire problem at the probable expense of equally deserving activities.

It develops that the task of the state financing of public assistance is cluttered with many incidental but unavoidable issues. To avoid them is to postpone problems that must be solved, and to face them squarely may bring about the anomalous situation of declining to take advantage of the full possibilities of the Federal Act.[8]

[6a] Social Security Act of Aug. 14, 1935, 49 STAT. 620, Tit. V, §§502 (b), 521 (a); Tit. VI, §602 (a).

[7] See Horack, *Federal-State Coöperation for Social Security: The Grant-In-Aid* (1935) 30 ILL. L. REV. 292.

[8] Notice the impressive list of "uncertainties" regarding the demands for relief and public assistance which New Jersey and its political subdivisions must face:

1. Uncertainty regarding the future policy of the federal government relative to the appropriation of federal funds for direct relief.

2. Uncertainty regarding the permanence of the present work relief program of the Federal W.P.A. and P.W.A.

3. Uncertainty regarding the number of employable persons in need of public assistance whose needs will not be met by the federal work program.

III

As the states proceed with operations under the social security plan, the following trends will become more and more pronounced:

One. There will be a marked tendency to avoid further borrowing for public relief purposes.

Two. There is developing a definite and necessary coöperative fiscal relationship between state and local governments.

Three. There is the cry for "economies" and the conservation of every resource for the purpose of financing public assistance.

Four. There is the hard fact that new taxes will, in many cases, be essential to carry out the obligations of the Social Security Act.

One. The matter of borrowing is easy to understand. Not only have the states and localities bonded themselves heavily for emergency relief purposes, but they have pledged important sources of revenue for payment of the obligations.[9] This has made their fiscal systems inflexible, and any further borrowing would tend, in many cases, to "dedicate" still more essential sources or even to burden still further hard-pressed general property.

There is another point. Capital outlays—particularly for institutions, schools and roads—have in many places suffered enormously during the past few years. While minor additions and improvements may be made from current revenues, major replacements must of necessity turn to some form of borrowing. Even though this be done sparingly, it will tend to restrict additional bond issues for more or less ephemeral purposes, and will reëmphasize the principle that public borrowing should be based upon permanent assets.

Two. The coöperative fiscal relation between state and local government is rooted in necessity. In the first place the Social Security Act requires that the state shall participate in the financing of most types of public assistance.[10] When this standard is set over against the traditional attitude that the care of the poor is entirely a local

4. Uncertainty pending judicial action upon the constitutionality of the Social Security Act.

5. Uncertainty regarding the amount of federal funds which may be available for relief purposes as outlined in the Social Security Act.

6. Uncertainty as to the possible readjustment of the present tax system in New Jersey which may alter the traditional financial responsibilities of the municipalities, counties and the state. New Jersey Conference of Social Work, *op. cit., supra* note 3.

[9] Following is an indication of amounts borrowed and revenues pledged in selected states: ILLINOIS: $17,000,000, Cook County bonds to be serviced by property levy; $30,000,000, state bonds, financed by motor fuel tax, counties and cities to divert their share of motor fuel taxes in proportion to percent of bond proceeds received; $20,000,000, state bonds, financed from counties' allotment of motor fuel tax. WASHINGTON: $10,000,000, state bonds, financed by diversion of 4/10 of 1 cent of the gasoline tax. NEW JERSEY: $20,000,000, state bonds, serviced from motor fuel tax; $5,000,000, state bonds, serviced from motor fuel tax, or if that is insufficient, from property tax; $10,000,000, state bonds, serviced from liquor taxes and funds resulting to the state from inheritance tax litigation, and if these sources are insufficient bonds to be serviced by state property tax. MARYLAND: $12,000,000, state bonds, serviced by property levy of 5 cents per $100 assessed valuation for years 1934-49 inclusive. CALIFORNIA: $20,000,000, state bonds, financed by withholding counties' share of motor vehicle fuel tax moneys, unless other means of repaying same are provided.

[10] Social Security Act, Tit. I, §102 (a) (2); Tit. IV, §402 (a) (2); Tit. V, §§503 (a) (1), 513 (a) (1); Tit. X, §1002 (a) (2); *cf.* Tit. V, §521 (a); Tit. VI, §602.

responsibility, and the hard fact that many of the so-called old-age and mothers' "pension" laws of the last fifteen years have been almost inoperative because the traditional local area was expected to furnish the funds, it is easily seen that new adjustments are unavoidable.[11]

During the early years of the depression, moreover, the apparent fact that localities could not carry their relief costs led to varying degrees and methods of state assistance. In some instances there was a complete displacement by the state of both the local poor relief machinery and local fiscal support. These adjustments were based upon administrative and financial necessity. Localities could not effectively manage, nor could they finance, public aid,—at least not without definite state guidance and assistance.

Thus previous experience demonstrates that if these services are to be rendered with any degree of uniformity, state finances must bear a considerable share of the load. Some localities still find sufficient revenues in their property taxes to maintain welfare activities, but many more find that a high case load of dependents means also restricted income for assistance.[12]

But the method of state participation is still far from a satisfactory solution. Generally speaking, state grants like the federal subsidies are measured directly by the amounts made available by the smaller units. If more state funds are to be spent, more local revenues must be found. The difficulty with this principle is that the degree of state financing is measured by the amount of local funds available, not by the need for welfare services. In most instances the real need is for a method of distribution in inverse proportion to local capacities.

Three. The trend toward a close integration of state and local revenues for the support of public assistance reflects the very general conviction that local revenues must be exhausted before state funds are utilized. Apart from reaffirming the principle of primary local responsibility there is also the firm belief that state taxes must be kept down and that to do this every available local revenue should be used.

[11] Of the thirty "old-age pension" laws in operation in 1934, little or no payments were being made in Kentucky, Nebraska, North Dakota and West Virginia. In eight states (Iowa, Maryland, Michigan, Minnesota, Nevada, Utah, Washington, Wisconsin) less than five percent of the total number of persons of eligible age were receiving aid. (It is estimated that fifteen percent of the total number of eligible age will qualify for assistance in the states now commencing this service under the Social Security Act.) In eight states (Arizona, Colorado, Delaware, Idaho, Indiana, Michigan, Montana, and Utah) aid averaged less than $10.00 per month. In five more (Iowa, Minnesota, New Jersey, Ohio and Wyoming) the average was less than $15.00 per month. See Hearings, *supra* note 6. Table 14, p. 77.

Of the forty-five state "mothers' pension" laws technically in operation in 1934, two (Mississippi and Arkansas) were inoperative. While average aid per case is not given, less than one thousand children were being benefited in each of nineteen states. See *id.*, Table 18, p. 80.

[12] Available materials indicate that among the states which have qualified under the Social Security Act, about one-half of the approved services are supported jointly from state and local funds. The proportions of this support range from a five percent state contribution in New Hampshire to 84 percent in Wisconsin. State-local sharing of cost is provided, among others, in Alabama (old-age and dependent children), Maine (old-age and dependent children), Maryland (old-age), New Hampshire (old-age and blind), Washington (dependent children), Wisconsin (old-age, blind and dependent children), Wyoming (old-age). Data obtained from Legal Research Section, Division of Social Research, Works Progress Administration, Washington, D. C.

On the side of the state this same viewpoint is placing a strong emphasis upon every possible curtailment,—savings from other operations that can be turned back to the treasury to support welfare. Old line departments and traditional activities are facing the need of demonstrating to the legislature and the state that their expenditures are as deserving as is the care of the indigent. During the early years of the depression the states and localities learned that relief is expensive business, and however necessary from the human view, is tremendously difficult to administer so that only those whose need is genuine will be accorded aid. In the beginnings of the new public assistance program, consequently, there is the heartfelt demand that faithful, competent administration grant public aid only to those actually in need, and then only to the extent of their need. At the same time, there is the equally insistent demand that every present resource be exhausted before new income is used.

The impression grows upon the observer that state tax systems are likely to be adjusted or "reformed" by off-hand methods and possibly by inadvertence. The states are not undertaking any comprehensive revision of their revenue plans in the interest of equity. Instead they are plucking surpluses, draining dedicated revenues, and resorting to any other expedients that can furnish additional money for public assistance without asking more of the taxpayer. The continuation of such a trend may before many years produce an even more seriously muddled condition of state finances than now exists.

Four. But with every effort at avoiding new revenues there will remain, in the vast majority of states, the inescapable need for new taxes. When this requirement is faced the prospects for new indirect taxes are excellent. General property is already overburdened, at least the property owner believes this so thoroughly that an effort to increase his levies would have rough going. Indirect taxes, consequently, seem the easy way out.[13] It has already been indicated that a good many states have resorted to this expedient for the financing of relief. In any case it seems a safe guess that as the cost of public assistance increases there will be a general revival and perpetuation of those incidental revenues that previously were regarded as desirable only when no other way seemed possible.

New taxes will bring other implications. As is usually the case when new revenues are needed without delay, the resort will doubtless be to those taxes promising a quick easy return with a minimum of administrative effort and complication. Little emphasis is placed upon the essential equity of the new levy—whether it is retrogressive, and whether it reaches those best able to pay. Such considerations are

[13] But there are legal complications perplexing the use of some indirect state taxes. The perennial issue between state constitutional provisions requiring an intrinsic uniformity and personal income taxation is well known. For a recent decision holding a state income tax invalid, among other reasons, because of a difference in exemption based on marital state, see Kelly v. Kalodner, 181 Atl. 598 (Pa. 1936). How confusing the effect of federal constitutional limitations may be in a rather new field of state taxation is well illustrated by recent decisions of the United States Supreme Court with respect to chain store taxation. See Notes (1935) 45 YALE L. J. 314; (1935) 21 IOWA L. REV. 93.

swept aside, and as long as enough funds will be realized, nothing else matters very much.

Another side of the financing of assistance reflects what may become a serious issue of values. During the past few years perhaps the most insistent fiscal issue in the states has been tax limitation, that is, the reduction of real property levies to a more or less arbitrary maximum, with reliance upon expanded state indirect taxes, and reductions in public expenditures to balance off the "savings."[14] What has actually happened is that expenditures have remained about the same, as one would expect; but indirect taxes have been expanded many fold to assure the continued operations of schools, the maintenance of roads and the upkeep of local government. While the trend toward the limitations seems to have slowed down considerably it is still far from a standstill, and in the states that have already undertaken the adjustment indirect taxes seem to be reaching the saturation point.

When public assistance, demanding new revenue, meets the counter force of general property seeking relief from heavy taxation, one or the other must yield. To quote odds on such a contest would indeed be risky business because of the infinite number of variable factors that fix the values of each state and will condition its judgment as to which is worth more, expanded public assistance or reduced general property levies. To hazard a rather loose prediction, it may be said that to the extent that the needs of public assistance are met by new state taxes, to the same degree the relief of general property will be inhibited. This will be true whether new taxes or local levies are used for the purposes of the welfare services.

IV

A long-run view appreciates that the whole tax problem is considerably involved. Federal policies of taxation make it difficult for many states to find other sources able to carry the load. There is, moreover, the whole question of the competitive or non-competitive status of industry within the state, and the effect upon its interstate business of increased taxation. Ultimately there arises the necessity for an integration of tax systems—national, state and local—that will take into consideration the difficult maladjustments that mar so much of the present tax structure.[15] Such an effort deserves the heartiest support; but it must be candidly admitted that efforts at readjustment will be postponed to the extent that the elasticity is taken from tax systems by the strains of rapidly expanded revenues, and accumulated obligations for which present and future collections are pledged.

[14] A detailed "case history" of the West Virginia experiment with tax limitation is given in Sly and Shipman, *Tax Limitation in West Virginia,* PUBLIC AFFAIRS BULL. No. 8; and Sly, Burke and Parry, *Indirect Taxes,* PUBLIC AFFAIRS BULL. No. 9, (Bureau for Gov't Research, West Virginia Univ., 1933). For a comprehensive treatment of tax limitation laws and the experience of states under them, see *Property Tax Limitation Laws,* PUBLIC ADM. SERVICE, PUB. No. 36, (Chicago 1934). See also articles by F. L. Bird, J. F. Sly, S. J. Barrick, S. E. Leland, A. H. Hall, and J. P. Jensen in the November, 1935, issue of the *National Municipal Review.*

[15] For an important study of the problem of conflicting federal and state taxes, see INTERSTATE COMM'N ON CONFLICTING TAXATION, CONFLICTING TAXATION, (Chicago, 1935).

It seems amply evident that the citizen is in for increased state taxes—particularly luxury, nuisance, and sales levies—to support programs of assistance. These new revenues will be in addition to federal payroll and other taxes, and the normally increasing needs of all public activities. All in all, the situation presents an unusual opportunity to those fiscal experts who are adept in the fine art of painless extraction.[16]

[16] It is still too soon to see the fiscal consequences and implications of state participation in the social security plan. Even in those states that have already received federal aid under the new act, adjustments in revenue, other expenditures, and the cost of the service itself cannot be clearly seen until another year has elapsed. The generalizations contained in the text are believed to be sound whether the particular state in question previously maintained reasonably extensive services or had none at all. In New Jersey, for example, the state cost of old-age assistance and aid for dependent children has been paid from state emergency relief funds. Consequently the permanent financing of public assistance is only part of the whole question of supporting all types of public care. In West Virginia, where old-age assistance was never paid and "mothers' pensions" granted only in a most inadequate way, it appears that even a modest expenditure for these purposes would much more than double the amounts now granted through the relief administration. Since the present cost of relief alone seems beyond the reach of state and local treasuries, the adjustments required in initiating the federally-aided services are rather perplexing.

THE CASE FOR THE CONSTITUTIONALITY OF THE SOCIAL SECURITY ACT

Harry Shulman*

The lawyer's task in this symposium is simple and unhappy. He need not speculate about the effects of the Social Security Act on life, on business, on government. He need not concern himself about the probabilities of expected benefits or suggested evils. Those thrilling jobs have been assigned exclusively to other contributors. Moreover, constitutional dogma teaches that, in his professional capacity of advising on constitutionality, the lawyer, as the judge, need not even persuade himself of the wisdom or folly, the desirability or undesirability, of the legislation—not even that the legislation is perhaps a little more wise than foolish or a little more foolish than wise. It is sufficient if the legislative determination has some reasonable support. The work of the Committee on Economic Security, the legislative hearings and the remainder of this symposium establish that support—and beyond peradventure. So the lawyer's job is simple: "to lay the article of the Constitution which is invoked beside the statute which is challenged" and, "uninfluenced by predilection for or against the policy disclosed in the legislation," see "whether the latter squares with the former."[1]

Observers of the Supreme Court's work tell us, however, that the lawyer's job is not so mechanical. He must determine not whether the legislation squares with the Constitution but rather how the tribunal having the power of ultimate decision will decide. When the Supreme Court is that tribunal, he must guess what at least five of the nine Justices will decide. Their decision, he is told, may be influenced by conscious or subconscious predilections, by earlier conditioning and by psychological factors of varying degrees of unpredictability. And certainly, decision involves either intelligent comprehension or mistaken distortion of the problems with which the legislation deals, the difficulties which they present, the manner in which the legislation deals with them and the problems of choice which were resolved by the adoption of that method. The lawyer's job, then, involves all the speculation and uncer-

* A.B., 1923, Brown University; LL.B., 1926, S.J.D., 1927, Harvard University. Member of the New York and Rhode Island Bars. Associate Professor of Law, Yale University School of Law. Special Counsel, Railroad Retirement Board. Law clerk to Mr. Justice Brandeis, United States Supreme Court, 1929-1930. Contributor to legal periodicals.

[1] U. S. v. Butler, 56 Sup. Ct. 312, 318, 325 (1936); Railroad Retirement Board v. Alton R. R., 295 U. S. 330, 346 (1935).

tainty inherent in economic or social forecasting. Yet, the economist or sociologist is rarely proved to his own satisfaction completely, or even partly, wrong. He can lay non-realization of his prophecy, not to his error, but to the intervention of other factors; or he can urge that conditions would have been still better or worse had his suggestions been followed or rejected. But the lawyer has no such solace. When the Supreme Court has decided, his prediction was either right or wrong, and beyond cavil—unless, indeed, he can find comfort in the thought, expressed by a distinguished veteran of the bar, "the Supreme Court may not accept these views, but I regard them as sound."

Moreover, the recent *T.V.A.* decision reminds, at an opportune time, that it is not constitutional to pass on constitutionality in the abstract. Judical decision must be rendered only with respect to specific issues raised by specific parties having specific interest in a specific case within judicial cognizance. No court is empowered by the Constitution to render opinions on the constitutionality of legislation. The Supreme Court's power, like that of the inferior federal courts, is only that of deciding cases or controversies appropriate for the exercise of the federal judicial power. In adjudicating such cases the Court may find it imperative to disregard legislation because it conflicts with the Constitution. But beyond yielding to this imperative necessity, as encountered and only to the extent encountered in cases before it, the Court may not inquire into the constitutionality of congressional legislation.[2] This theory need not be idle liturgy. It should have substantial practical significance. For, since neither the Constitution nor constitutional theory sets up the judiciary as a third branch of the government to advise on constitutionality and since neither the Constitution nor constitutional theory creates cases or controversies through which constitutionality is to be determined by the judiciary, some legislation, a least, may be beyond the scope of judicial review on this orthodox theory. In such cases, determination of constitutionality rests with the other branches of the government; and the enactment of the legislation is conclusive of its constitutionality until there is a change of mind in those branches. An outstanding feature of the recent work of the Supreme Court has been the expansion of the area in which it exercises power.[3] But that expansion, like other constitutional determinations, has divided the Court and is subject to the possibilities of the future. There is still vitality in the orthodox theory and it has considerable significance in discussions of the constitutionality of the Social Security Act.

[2] Ashwander v. Tennessee Valley Authority, 56 Sup. Ct. 466 (1936). Both major opinions profess this dogma and both are limited in deference to it, though in different ways. The opinion of Mr. Justice Brandeis refuses to deal at all with the constitutionality of T.V.A.; and the opinion of the Chief Justice deals with the problem only as related to the Wilson Dam.

[3] *E.g.*, U. S. v. Constantine, 56 Sup. Ct. 223 (1935); Colgate v. Harvey, 56 Sup. Ct. 252 (1935); U. S. v. Butler, 56 Sup. Ct. 312 (1936); Rickert Rice Mills, Inc. v. Fontenot, 56 Sup. Ct. 249, 374 (1936); Gt. No. Ry. v. Weeks, 56 Sup. Ct. 426 (1936); Ashwander v. T.V.A., 56 Sup. Ct. 466 (1936); see Collier, *Judicial Bootstraps and the General Welfare Clause* (1936) 4 GEO. WASH. L. REV. 211, 217.

TITLES I, III, IV, V, VI, X

These titles, which respectively envisage grants to the states for old-age assistance, unemployment compensation administration, aid to dependent children, maternal and child welfare, public health work, and aid to the blind, may be considered together.[4] None operates on individuals. None requires action from individuals. All merely provide for federal grants of money to the states, which the states may take or reject, to aid the states in their performance of the named objects. Some limit the amount of the federal grant to a percentage of the total to be expended by the states and condition the grant upon financial participation by the states. Others make outright grants not conditioned upon any state financial participation. All impose conditions upon the administration and expenditure of the funds.

Unless the Supreme Court turns its back on a century of constitutionalism and the judicial power is expanded beyond even its present wide borders, these grants-in-aid are constitutional so long as Congress deems them so. For, while similar grants-in-aid have been common in our history, the Supreme Court has expressly disclaimed power to review their constitutionality. In *Frothingham v. Mellon* and in *Massachusetts v. Mellon*[5] the Court held that neither a general taxpayer nor the state had a standing to question the appropriations under the Sheppard-Towner Maternity Act.[6] Whether the taxpayer pays small or huge taxes is immaterial, as indicated in the opinion of the Chief Justice in the *T.V.A.* case.[7] The point is that the taxpayer's money is collected for the general use of the government and is not earmarked for a particular purpose or specifically imposed to recompense for particular expenditures.[8] Unlike the processing taxes of the A.A.A., Mrs. Frothingham's taxes were not special taxes imposed in connection with the special scheme of expenditures. The processors were successful in their challenge of the A.A.A. taxes because the Court regarded that Act as "one regulating agricultural production" with the tax "a mere incident of the regulation" and an "exaction" from the processors for bestowal upon the farmers. But the authority of the Maternity cases

[4] In conversation Title III is commonly linked with Title IX. Naturally, since both relate to unemployment compensation. But for the purpose of inquiring into their constitutionality there is little justification for linking the two titles together. It can hardly be said that the Title IX tax is imposed for the purpose of balancing the Title III appropriation. If the purpose of both titles is to encourage state unemployment compensation plans, nevertheless they are not integral parts of a single scheme; each holds forth a separate inducement. Since they are separate titles and since there is not even a budgetary relation between them—and particularly in view of the separability clause—the constitutionality of each may be considered independently of the other. The validity of Title IX will be considered presently. If that title is deemed valid, when considered by itself, it seems inconceivable that its legality is affected by Title III. Conversely, if that title is held invalid, when considered by itself, Title III cannot alter the judgment, but likewise, Title III need not automatically suffer the same fate.

[5] 262 U. S. 447 (1923).

[6] 42 STAT. 224 (1921).

[7] 56 Sup. Ct. at 470: "While their stock holdings are small, they have a real interest. . . . If otherwise entitled, they should not be denied the relief which would be accorded to one who owned more shares."

[8] With respect to the state's suit, there was the additional ground that, since "nothing has been done and nothing is to be done" under the statute without the states' consent, "it is plain that the question, as it is thus presented, is political and not judicial in character, and therefore is not a matter which admits of the exercise of the judicial power." 262 U. S. 447 at 483.

was expressly saved.[9] It seems unlikely that the Court will dub the past practice a "century of error" and undertake to review general government expenditures at the suit of a general taxpayer or a state.

The grants-in-aid of the Social Security Act are quite like those of the Maternity Act. Both acts provide for appropriations from general funds in the Treasury. Neither requires or contemplates special taxes to balance the expenditures. Indeed, Title V provides federal expenditures for the very same purposes as the Maternity Act, and Part 4 of Title V implements the Vocational Rehabilitation Act previously in force. The objects of the other grants are of the same character as maternal welfare. On the issue whether federal expenditures for their welfare are subject to judicial review, constitutional law does not differentiate between child-bearing mothers and the blind, the aged, or the crippled children; nor is public health service or the administration of unemployment compensation on a different constitutional plane.[10]

If there is no procedure whereby these grants may be subjected to judicial review, then Congress, not the Court, is the ultimate judge of their constitutionality. And if the issue of constitutionality should be raised in Congress, the argument for validity is quite convincing. A century of practice and an abundance of persuasive precedent are alone weighty considerations. The appropriations are for the "general welfare" in any intelligible meaning of that phrase. They operate throughout the nation to aid the states in relieving distress common in all of them, common, that is, in the nation and directly affecting the national welfare. The states' need of federal aid in providing for this relief is the outstanding lesson of our current history and is conceded by all shades of political belief. The expenditures are administered by the states. They involve no element of regulation or coercion of the kind found by the Court in the A.A.A. or of any kind. The federal government is not superseding the state or invading its powers, but on the contrary is aiding it and strengthening its efforts.

But even a more limited interpretation of general welfare would include the national interest in the nation's man-power in connection with its responsibilities for war and interstate and foreign commerce. The relationship of public health service and child and maternal welfare on a national scale to the maintenance of that man-power is quite clear. No less is the nation's concern with the effect on its man-power of the distress of the aged and unemployed when that distress becomes a national phenomenon. The argument is not that under its interstate commerce or war powers, the Congress can enact any legislation which would affect the objects of those powers, but rather that the nation's interest in war and commerce is relevant in determining whether the general warfare is promoted by an exercise of the inde-

[9] 56 Sup. Ct. 312, 315-17.

[10] Part C, pp. 61-69, of the Appendix to the Brief for the United States in the A.A.A. case contains a collection of many previous grants in aid. See also Horack, *Federal-State Coöperation for Social Security: The Grant-in-Aid* (1935) 30 ILL. L. REV. 292.

pendent power of appropriation. Whether or not the nation may regulate industry or individual conduct to prevent such distress, an unencumbered appropriation of money to be expended by the states for such relief—expenditures calculated to promote stability in purchasing power, to foster physical health, and to avoid starvation or demoralization throughout the population—is surely for the general welfare even when that phrase is narrowed in meaning.

"The aged" should not be given a literal meaning which would distort the purpose of the Act. The term refers not so much to a category of persons as to a type of social maladjustment affecting the population generally. Aged persons are not a group detached from persons as a whole. They are bound to the rest of the population by family and economic ties which prevent segregation or isolation. The support of aged persons casts a heavy burden on their younger relatives. Suffering or demoralization among the aged means also suffering and demoralization among the younger members of their families. Relief for the aged is relief, moral and economic, for the young—relief for the population generally. "The aged" describes, not the beneficiaries of the legislation, but the medium through which the general welfare is sought to be promoted.

It may be suggested that the grants are in fact encumbered by conditions which make a difference;—conditions requiring financial participation by the states, statewide operation of the state plans, reports to the Social Security Board, administration or supervision by a single state agency and with approved methods, fair hearings for aggrieved individuals and avoidance of unapproved residence or citizenship requirements. But similar conditions commonly encumbered grants-in-aid made in the past.[11] All of them relate solely to the administration and expenditure of the funds appropriated. None of them requires conduct unrelated to the expenditure. All are prudent safeguards dictated by experience to insure economical rather than wasteful expenditure of the funds, by agencies financially interested rather than agencies dealing only with "other people's money," for the objects stated rather than for wasteful administration, openly and under public scrutiny rather than in official secrecy, for the national welfare rather than for local or individual preferment. None of these conditions has any resemblance to those condemned in the *A.A.A.* case. It would be the absence of such prudential conditions, rather than their presence, which might condemn the Act.

TITLE VIII

The power of Congress to "lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United

[11] *E.g.*, the Maternity Act required state participation, a state agency, reports by the state agency to the Federal Children's Bureau, approval of state plans by the federal board, and prohibition in the state plans against taking children over parents' objections; it prohibited the use of the grant for the purchase, erection or repair of buildings or equipment and required that the money appropriated by the states be not used for the payment "of any maternity or infancy pension, stipend, or gratuity"; and it authorized the withholding of the federal funds upon a finding that the state agency "has not properly expended the money paid to it or the moneys herein required to be appropriated by such State." 42 STAT. 224-26.

States"[12] has few limitations in the Constitution. There is first the limitation in that very grant of power; and there is the further provision in the same section that "all duties, imposts and excises shall be uniform throughout the United States." Section 9 of Article I also provides that "no capitation, or other direct, tax shall be laid unless in proportion to the census or enumeration . . .;" and this prohibition is modified by the Sixteenth Amendment which authorizes "taxes on incomes, from whatever source derived, without apportionment among the several states and without regard to any census or enumeration." To these limitations of the Constitution must be added those of the judicial gloss,[13] that the tax must be really a tax and not a penalty for conduct which Congress may not otherwise penalize,[14] that it must be a true tax rather than a disguise for, or an integral part of, a scheme of regulation which Congress may not enact directly,[15] that it must be a tax rather than an exaction so arbitrary and capricious as to constitute a deprivation of property without due process of law.[16]

The immediate purpose of the taxes imposed by Title VIII is unquestionably to raise revenue. They are, therefore, not subject to the weakness of the taxes condemned in the *Child Labor Tax Case*[17] or *Hill v. Wallace*.[18] In those cases, the taxes were regarded as penalties or regulations because the government obviously did not desire revenue to result from their imposition. The taxes were imposed for prescribed conduct which it was clearly hoped would be abandoned under their compulsion. But it is even clearer that Title VIII is not intended to discourage employment, that its success depends upon the production of revenue rather than avoidance of the tax by abandonment of stated conduct. The taxes are not penalties. Likewise, neither Title VIII nor the remainder of the Act attempts to regulate the conduct of the taxpayers, or of any other individuals, beyond requiring them to pay the taxes and make the returns incident to tax collection. The taxes are consequently not regulations, unless the possible expenditures work a conversion, but that issue may be postponed for the moment.

The subjects of the tax seem to be clearly within the limits of the constitutional grant of power to levy "taxes, duties, imports and excises." It is needless to determine what the nature of the tax is, for it certainly falls within one of the four designations. The choice of subjects is unlimited except by the uniformity and apportionment provisions and, perhaps, by the due process clause of the Fifth Amendment. The uniformity clause requires only geographical uniformity, that is, opera-

[12] U. S. CONST., ART. 1, §8.

[13] For full analysis of that gloss, see Powell, *Child Labor, Congress, and the Constitution* (1922) 1 N. C. L. REV. 61; Cushman, *Social and Economic Control Through Federal Taxation* (1933) 18 MINN. L. REV. 757.

[14] Child Labor Tax Case, 259 U. S. 20 (1922); Hill v. Wallace, 259 U. S. 44 (1922); U. S. v. Constantine, 56 Sup. Ct. 223 (1935).

[15] U. S. v. Butler, 56 Sup. Ct. 312 (1935).

[16] Nichols v. Coolidge, 274 U. S. 531 (1927); Untermyer v. Anderson, 276 U. S. 440 (1928); Heiner v. Donnan, 285 U. S. 312 (1932).

[17] *Supra* note 14.

[18] *Supra* note 14.

tion throughout the United States.[19] Title VIII does so operate. The apportionment provision is applicable only to capitation and other "direct" taxes. Title VIII levies neither kind. The taxes are not on the ownership of property or the income from property so as to fall under the ban of unapportioned "direct" taxes.[20] The employer's tax refers to his employment of individuals, regardless of whether or not he has property or income from property. The employee's tax is levied on his income not from property but from personal service, a subject available for taxation without apportionment even before the Sixteenth Amendment.[21] Employment of others and the derivation of income from personal labor are readily ascertainable economic functions and are, therefore, within the range of subjects available for federal taxation.

The selection of employment and wages for taxation can hardly offend the due process clause so as to render the tax in fact an arbitrary deprivation of property. There is no requirement that the same taxes be levied on all persons in the country. Congress, like the legislatures of all other governments, has made special selections throughout our entire history as a nation. Manufacture of tobacco and liquors, sugar refining, use of foreign-built yachts, mining, sales of securities, theatre tickets, gasoline, and luxuries generally, gifts, inheritances, narcotics, land deeds and other legal documents—these and numerous other things have been subjected to separate federal taxation.[22] The Congressional choice of subjects is quite unlimited.

But attack may be directed at the exemptions. Employers may urge that due process under the Fifth Amendment implies equal protection of the laws and that equality is denied by the exemption of employers mentioned in Section 811. It is doubtful whether the Fifth Amendment is such a limitation upon the taxing power as to require even the rough approximations of equality required of state laws by the Fourteenth Amendment which expressly commands equal protection. The power of selection already discussed is a power to exempt. The difference is only in verbal statement. The subject of the tax may be narrowly defined so as to exclude certain persons by negative implication or it may be defined more broadly with express exemption of the same persons sought to be excluded. There is no case in which such an attack upon a federal tax has been sustained or even encouraged.[23]

[19] Knowlton v. Moore, 178 U. S. 41 (1900); Bromley v. McCaughn, 280 U. S. 124 (1929).

[20] Pollock v. Farmers' Loan & Trust Co., 158 U. S. 601 (1895); Dawson v. Kentucky Distilleries Co., 255 U. S. 288 (1921); Bromley v. McCaughn, 280 U. S. 124 (1929).

[21] Pollock v. Farmers' Loan & Trust Co., *supra* note 18.

[22] Almost any general revenue act since the war provides abundant precedent for broad Congressional discretion in the selection of subjects for taxation. And see Hylton v. U. S., 3 Dall. 171 (1796); Veazie Bank v. Fenno, 8 Wall. 533 (U. S. 1869); Nicol v. Ames, 173 U. S. 509 (1899); Thomas v. U. S., 192 U. S. 363 (1904); Spreckles Sugar Refining Co. v. McClain, 192 U. S. 397 (1904); McCray v. U. S., 195 U. S. 27 (1904); Flint v. Stone Tracy Co., 220 U. S. 107 (1911); Billings v. U. S., 232 U. S. 261 (1914); Bromley v. McCaughn, 280 U. S. 124 (1929); *cf.* Edelman v. Boeing Air Transp., 289 U. S. 249 (1933); Fox v. Standard Oil Co., 294 U. S. 87 (1935). The Court has sustained selection, for taxation, of anthracite coal from all other coal, Heisler v. Thomas Colliery Co., 260 U. S. 245 (1922), of herring from all other fish, Alaska Fish Co. v. Smith, 255 U. S. 44 (1921).

[23] On the contrary, the Court has discouraged such attacks: "Except in rare and special instances, the due process of law clause contained in the Fifth Amendment is not a limitation upon the taxing power

But even were it otherwise, the exemptions have ample justification. (1) Exemption of employment by a state and its subdivisions is justified by constitutional limitations which are similarly operative on the general income tax. (2) A tax by the federal government on itself and its instrumentalities as employer will hardly be urged. (3) Exemption of religious, charitable and educational institutions has historic precedent and long tradition as justification, apart from other considerations relating to this specific tax. (4) Likewise exemption of agricultural labor, domestic service and service performed by crews on vessels—simply because of their intrinsic difference from other employment—has sufficient precedent in past practice.[24] And there are additional considerations. It would be strangely inconsistent, at least now, for the government to increase the tax burden on agriculture while it is at the same time searching for means to lift agriculture from its financial plight. The compensation of all three classes of employment consists largely of maintenance and only partly of money. Collection of the tax might cost more than the tax would bring. (5) The similar burden of expenditure and the annoyance to the taxpayer suffice to justify the exemption of casual labor. (6) Exemption of service performed by a person who is over 65 years of age may be rested on the desire not to afford additional encouragement for the discharge of, or refusal to employ, such persons, whose age alone puts them at a disadvantage.

These answers may also be made to the complaint that the employee's tax makes the same exemptions. But here there is the additional quite conclusive answer that the exempt employees are not given any benefits under Title II of the Act. This is equally the response to the objection, that the tax is levied only on wage income—apart from the additional fact that it has long been held that an income tax need not include income from all sources.[25]

There are other minor objections of inequality. The taxes are not levied on wages over $3,000. An employer having one employee to whom he pays $6,000 is taxed upon $3,000, while an employer having two employees throughout the year to each of whom he pays $3,000 or one employee for six months at $3,000 and a different employee for the other six months, also at $3,000, is taxed upon $6,000. An employee earning $6,000 from one employer is taxed on $3,000 while an employee earning $3,000 from each of two employees is taxed on $6,000. Such objections assume that the due process clause is an especially sensitive instrument which can cut exceedingly fine. And they would turn attention away from major features to minutiae which are of little importance and which can be readily corrected if found

conferred upon Congress by the Constitution." Magnano v. Hamilton, 292 U. S. 40, 44 (1934). See also Brushaber v. Union Pacific R. R., 240 U. S. 1 (1916) where objections to tax exemptions similar to those in the Social Security Act were held to be without substance. The federal taxes which have been declared unconstitutional under the due process clause have been only those which the Court deemed to be retroactive; note 16, *supra*.

[24] *E.g.*, workmen's compensation acts, taxes on motor vehicles and gasoline.

[25] Pollock v. Farmers' Loan & Trust Co., *supra* note 20; Brushaber v. Union Pacific R. R., *supra* note 23; *cf.* Klein v. Board of Tax Supervisors, 282 U. S. 19 (1930).

faulty. But each of the objections may be met. The government, in need of revenue, may well decide to broaden its tax base and avoid cumulation of taxes. The $3,000 limitation may be the result of such an effort. Income above that amount is subject to the graduated income tax. The possible difference in the employers' tax which may result from differences in the number of employees to whom the same aggregate amount of wages is paid is the result, not of unequal, but of equal, treatment. The tax is on the privilege of employment and the privilege is exercised to a greater extent when a greater number of employees are employed. The number of employees and the amount of wages paid are both reasonable measures for the tax.[26] As for the employee who pays a higher tax because he receives wages from two employers rather than one, a sufficient answer may be the practical difficulties of administration which would be involved if the employer's records could not form the basis for assessment and collection.[27] "In another sense, moreover, there is equality." The income tax is an excise on being employed by another for wages. Two employments may, again, be regarded as a greater exercise of the privilege than one.[28] Like the "numerous and minute, not to say in many respects hypercritical contentions" made in the *Brushaber* case, the objections here "rest upon the mistaken theory that although there be differences between the subjects taxed, to differently tax them transcends the limit of taxation and amounts to a want of due process."[29] "It is a sufficient answer to say that you cannot carry a constitution out with mathematical nicety to logical extremes."[30]

TITLE II

The scheme of the Act reflects the hope that the validity of the taxes might be determined without investigation of the expenditure of the funds collected. With the validity of the taxes thus determined, there would then be no one, in view of ***Frothingham v. Mellon,*** who could question before the courts the general validity of the appropriations and expenditures. But the ***A.A.A.*** decision has shaken the foundation for that hope. It is still true, of course, that there is no express tie-up

[26] Chain store taxes based on the number of stores, regardless of their revenues, have been upheld despite objection under the equal protection clause. See Fox v. Standard Oil Co., *supra* note 22. Likewise, with respect to the objection that an employer of one person at $3,000 pays a higher tax than an employer of two persons at $1,000 each, there is precedent in sales taxes generally. A purchaser of a $60 suit pays a higher tax than a purchaser of two $20 suits. And see Bromley v. McCaughn, 280 U. S. 124 (1929), where the gift tax was challenged because, by virtue of graduation and exemption, "the tax levied upon donors of the same total amounts may be affected by the size of the gifts to individual donees." The challenge was, of course, unsuccessful. License fees are frequently fixed at a flat sum without reference to the amount of business done by licensees, or are graduated to a maximum which disregards differences above a certain point.

[27] N. Y. *ex rel.* Hatch v. Reardon, 204 U. S. 152 (1907), involved a stamp tax of two cents on each hundred dollars of *face value* of stock for every sale or agreement to sell the same. The tax was challenged under the due process clause because face value rather than actual value was the measure. Said the Court: "The inequality of the tax, so far as actual values are concerned, is manifest. But, here again equality in this sense has to yield to practical considerations and usage" (at p. 159).

[28] *Cf.* N. Y. *ex rel.* Hatch v. Reardon, *supra* note 27.

[29] Brushaber v. Union Pacific R. R., 240 U. S. 1, 24, 26 (1916).

[30] Paddle v. New York, 211 U. S. 446, 450 (1908).

between the taxes levied by Title VIII and the appropriations authorized by any other title of the Act. The taxes are not earmarked but go into the general funds of the government. The appropriations are to be made from the general funds. There is no exact or textual correspondence between the amounts of the appropriations and the amounts expected from the taxes. And there is no express dependence of one upon the other. The appropriations are authorized without reference to possible experience in the tax collection.

It is generally charged, however, that there is at least a budgetary correspondence between Title II and Title VIII, that the taxes are imposed to balance the appropriations authorized so that the federal budget will not be distorted. Assume, therefore, that in its inquiry as to the validity of the taxes, the Court professes power to inquire also into the budget and is convinced that Title II is the *sine qua non* and major justification for the tax. As stated previously, no amount of analysis or psychoanalysis of the Act can disclose any purpose for the tax other than that of raising revenue. Unlike tax acts previously declared unconstitutional, this Act is obviously intended to promote rather than retard the frequency of the subject taxed, to raise more and more rather than less and less revenue. And unlike the A.A.A. expenditures, the Title II expenditures are to be made without requiring anybody, by way of contract or condition, to act or refrain from acting in any manner. There is no penalty, no regulation, no attempt to "purchase compliance,"—only a tax and an expenditure. The benefits are paid only to those aged who do not continue in employment. But they are neither coerced nor tempted by the Act to retire from service. The benefit payments are considerably smaller than wages. A person who chooses to remain in service after 65 receives his wages rather than benefits until he is retired. He prejudices in no way his right to benefits upon retirement, the amount of the monthly benefits, or the amount of the death payments. The provision is simply that an individual shall not be paid both benefits and wages for the same month. To regard this as a coercion or purchase of retirement comes close to regarding unemployment relief or poor relief as a coercion or purchase of unemployment or poverty.

Is the appropriation one for the common defense and general welfare? In the *A.A.A.* case the Court concluded that the general welfare was sought to be promoted not by the simple donation of money but by the purchase with that money of restraints which Congress was otherwise unauthorized to impose. On the interpretation of the general welfare clause, however, the Court adopted unreservedly the so-called broad or Hamiltonian point of view that the power to authorize expenditures of public money is not confined in its objectives to the other enumerated powers of the federal government but may be exercised broadly for the promotion of the national general welfare. The Court expressly declined "to ascertain the scope of the phrase 'general welfare of the United States' or to determine whether an

appropriation in aid of agriculture falls within it."[31] The Court has undertaken to ascertain whether a tax is, in its view, truly that or something else. But it has never undertaken to ascertain whether the object of an appropriation is, in its view, the general welfare. In a century and a half of history that issue has been left to the judgment of Congress.

Unless one is to set himself up as an omniscient economist or sociologist with unerring prophetic wisdom, it must be conceded that there is abundant support for the Congressional determination that the tax and expenditure will promote the constitutional objectives. The Act operates throughout the United States on a universal phenomenon—advancing age. It promises to introduce for the American population as a whole a more certain income, a more continuous purchasing power, a more secure future. It is expected thus to promote general prosperity, avoid precipitate dips of depression and foster our national commerce. And it is expected thus to produce a healthier, more confident, more contented and more loyal citizenry—for common defense and general welfare in war and in peace. Expenditures for a national monument at Gettysburg[32] or for bonuses or pensions to ex-soldiers are hardly more closely related to the future common defense and general welfare of the United States than expenditures for assurance of security to the national population and for lightening the burden on the young generation to support the old.

There is another close federal purpose—the purpose to protect the government finances. Under Title I of the Act, the federal government has undertaken to aid the states financially in the provision of relief for the needy aged. It is quite clear that federal aid will be necessary and will be extended so long as the need for relief continues. The constitutionality of federal expenditures for this purpose has already been discussed. As a practical matter, regardless of individual private opinion, those expenditures are constitutional and we can start with that as a datum. Whether such expenditures by the federal government will be required continuously or only in the recurrent periods of depression is not material for the present point. The fact is that the federal government is under a present and potential liability to provide large sums of money for the relief of the needy aged. Now the evidence is convincing that the numbers of aged and needy aged in our population will constantly increase for a considerable period in the future, and that the expenditures for relief to the needy aged will, for that reason and others, mount at a rapid rate. The financial burden on the federal government, therefore, threatens to be quite heavy. To ease that burden and provide against it by application to its source is one function of Title II. In a large sense, it is a civilized substitute for an old and now unsatisfactory system of relief. Insofar, then, as the Title VIII taxes are provisions against anticipated federal obligations, they are the result of a typical and traditional exercise of the taxing power.

[31] 56 Sup. Ct. at 320.

[32] U. S. v. Gettysburg Electric Ry., 160 U. S. 668 (1896).

Of course, Title II is not limited to relief of the needy aged. A very substantial portion of the beneficiaries of Title II will be needy. Another portion would be needy but for the operation of the Act. Some probably will not and would not be needy. Title II is not merely a palliative. It attempts to cure the condition and prevent its recurrence. It is a civilized measure precisely because it is focussed on the social problem rather than on the individual symptoms. And it is certainly wise statesmanship that a provision against future obligations should rely upon systematic, automatic administration and avoid the costs, the wastes, the dissatisfactions, the humiliations and the dangers of individual determinations of need.

What has been said would seem to answer the possible objection that the Act invades the powers reserved to the states by the Tenth Amendment. Provision of the kind of benefits contemplated by Title II can hardly be regarded as of merely local concern in view of our own recent history and the history of all other industrial countries. The national interest in the welfare of the national population is obvious. That the Act is calculated to promote that welfare is also clear. The issue is only whether the nation has power to enact the specific legislation in furtherance of that interest. National interest in the general welfare has been deemed insufficient to warrant coercive national regulation of *local* commerce, even though that regulation might promote the general welfare, because the national power to regulate commerce is limited to interstate commerce. But the criterion of the power to tax and appropriate is only the purpose to promote the general welfare. That power expressly conferred is, as the Chief Justice stated in the *T.V.A.* case, not abridged by the Tenth Amendment.[33] Granted that Titles VIII and II only tax and appropriate, then they are within Congressional power. The *A.A.A.* case and its predecessors contain, as pointed out above, no warrant for a contrary holding. In all of them, the legislation did more than tax and appropriate.

The charge that while the tax is not a penalty or regulation it is still not a "true" tax but rather an "exaction" or "expropriation of money from one group for the benefit of another" in violation of the due process clause is largely unfounded invective. It is difficult to think of the persons taxed under Title VIII and the persons entitled to benefits under Title II as different "groups." If the funds required under Title II were collected by means of some other general tax, a sales tax or the income tax, the charge could hardly be made. In a sense all taxes are exactions of money from one group for the benefit of another. No expenditure returns to the taxpayer direct benefits, or indirect benefits through the general welfare, exactly proportioned to his tax payments. Tax money expended for soldiers' bonuses, for relief of the unemployed and the needy, and for pensions to Presidents' widows and civil servants is in direct form money exacted from one group for the benefit of another. In substance the case is no less clear with respect to the protective tariff and

[33] 56 Sup. Ct. at 475: "To the extent that the power of disposition is thus expressly conferred, it is manifest that the Tenth Amendment is not applicable. And the Ninth Amendment . . . does not withdraw the rights which are expressly granted to the federal government."

the taxes paid by that class of the population who smoke tobacco and drink liquor. Yet that is hardly expropriation. The legislative determination that the taxes and expenditures are for the general welfare is a determination that they are for the benefit of the taxpayers as well as the direct recipients of the expenditures. There is, and can be, no requirement that taxes or expenditures benefit all taxpayers in precisely the same manner or in degrees exactly proportioned to their taxes. The charge of "expropriation" raises no new issue even though it points to a psychological hazard.

Similar is the charge that by Titles VIII and II the federal government has embarked upon the insurance business in competition with private enterprise. In point of fact, the statement is quite untrue. There is practically no private enterprise in the limited field in which these titles operate. And there is practically no prospect that private enterprise can or will occupy the field. But legally, the charge even if true does not condemn. If competition with private enterprise is the consequence of an exercise of a power granted by the Constitution, then it is a consequence permitted by the Constitution. The fact of competition with private enterprise was accorded no significance in the *T.V.A.* case because competition was the necessary consequence of the granted power to dispose of property properly acquired. Yet there the competition was real and obvious. And the Court sanctioned a disposal of the property in not the least but in the most competitive manner. It sanctioned the purchase of transmission lines, as an incident of the power to dispose, in order to effect a more competitive disposal. Titles VIII and II do nothing more than tax and give for the general welfare—powers admittedly granted to Congress.

It may be said, however, that the field is reserved for private enterprise regardless of whether or not private enterprise has chosen to occupy it. But constitutional law does not define the kind of enterprises into which government may enter beyond prescribing that the taxation shall be for the "general welfare," or, as it is frequently put, for a "public purpose." States and their subdivisions have been permitted to engage in a variety of enterprises under this limitation.[34] The test is not rigid, but concerns itself with judgment as to need in each instance. It asks how great is the public need for the particular service; how important to the life of the community is the service; how adequately or inadequately is it furnished by private enterprise; how extensively does the government propose to furnish it and how seriously does the government's activity interfere with private enterprise. What has already been said sufficiently answers these questions. For similar reasons the federal government is already in the banking business with its Land Banks and others and in the insurance business under the War Risk Insurance Act. The alleged entry into and competition with private business is a ghost having no reality—but it is a ghost which may frighten, and fright may prompt unwise and unjustified action.

One further point. If we look into the expenditures for the purpose of discover-

[34] See, *e.g.*, Green v. Frazier, 253 U. S. 233 (1920); Jones v. City of Portland, 245 U. S. 217 (1917).

ing possible grounds for invalidating the taxes, we should not neglect the evidence thus made available for rebuttal of objections to the taxes. The scheme of benefits provided in Title II, if considered in connection with Title VIII, affords independent answer to the objections of inequality and due process previously discussed.

TITLE IX

Much of what has been said about Title VIII is, of course, equally applicable to the tax imposed by Title IX. Thus, the questions as to the selection of the employment of others as the subject of the tax, the exemption of certain employment and geographical uniformity need not be discussed again. The additional exemption of employers of less than eight employees should occasion no difficulty. Minor exercises of a privilege are commonly exempted from taxes on the privilege. The gift tax, the inheritance tax, the amusement tax all begin a little above the bottom, though the respective privileges are exercised when the gift or inheritance is below the taxable amount or the cost of the amusement cheaper. Likewise, the additional factor that credits upon the tax are allowed for payments under state laws and the state laws may vary, introduces no difficulty with respect to the requirement of uniformity. Geographical uniformity is still provided. The divergence is due not to the Act but to the uncontrolled distribution of the phenomena upon which the Act operates. Wherever the phenomenon occurs, the Act operates. Precisely similar divergence exists with reference to the credits and deductions for state tax payments allowed in the federal estate tax in the federal income tax. "Congress cannot accommodate its legislation to the conflicting or dissimilar laws of the several states nor control the diverse conditions to be found in the various states which necessarily work unlike results from the enforcement of the same tax. All that the Constitution (Article I, Section 8, clause 1) requires is that the law still shall be uniform in the sense that by the provisions the rule of liability shall be the same in all parts of the United States."[35]

The scheme of Title IX is modeled on the federal estate tax which passed muster before the Supreme Court in *Florida v. Mellon*.[36] That tax may "be credited with the amount of any estate, inheritance, legacy, or succession taxes paid to any State," the credit not to exceed 80 per cent of the federal tax. The legislation was assailed on the ground that it constituted "an invasion of the sovereign rights of the state and a direct effort on the part of Congress to coerce the state into imposing an inheritance tax and to penalize it and its property and citizens for the failure to do so." Said the Court: "The act assailed [Section 301 of the Revenue Act of 1926] was passed by Congress in pursuance of its power to lay and collect taxes, and, following the decision of this court in respect of the preceding act of 1916, *New York Trust Co. v. Eisner,* 256 U. S. 345, must be held to be constitutional."[37]

Prior to the 1926 Act the credit upon the federal estate tax allowed for state tax

[35] Florida v. Mellon, 273 U. S. 12, 17 (1927).
[36] *Supra* note 32.
[37] *Id.* at 16, 17.

payments was not to exceed 25 per cent of the federal tax.[38] At that time Florida, which had no inheritance tax, did not complain. It was still a favored and profitable state of domicile for persons of large estates. Then Section 301 of the 1926 Act increased the credit to 80 per cent. It was that increase that made it insufficiently profitable for such persons to become domiciled in Florida. And it was that increased credit which Florida challenged as being less an attempt to raise revenue and more an attempt to coerce non-inheritance-tax states to impose inheritance taxes, or at least to remove Florida's advantage as a prospective state of domicile over the states which did have inheritance taxes. The characterization seemed quite apt. Here was an attempt to raise revenue which would obviously result in reducing revenue by some 75 per cent. Yet the tax is constitutional. It produces some revenue. It reduces, by the credit and not necessarily by the increase in the credit, the burden of cumulative taxation. It recognizes state policy and preserves sources for state revenue, though frustrating another state policy like that of Florida. It does not directly attempt to discourage or coerce action by individuals. And it does not attempt or hope to discourage the frequency of the subject taxed.

The legal form of Title IX is a faithful replica of its model. It, too, allows a credit only for money paid under compulsion of state law (except for the additional credit under Section 910, to be mentioned presently). It, too, will raise substantial revenue, even if all taxpayers become eligible for the credit. It hopes to encourage rather than discourage the frequency of the subject taxed. It, too, is designed to avoid cumulative taxation and permit the execution of state policy. The additional credit allowed by Section 910 is but additional precaution against undue interference with state policy. If additional credit were not allowed, the Act would tend to proscribe a type of state unemployment compensation plan which is already in existence (*viz.*, the "Wisconsin" or "employer reserve" plan) and for which there is a good deal of demand and promise. It would be quite paradoxical if such measures, enacted under an express power and designed to protect the states in the execution of their policies, were deemed to be invasions of the states' powers.

There are, however, some differences. Credit on the Title IX tax is allowed only for payment under such state laws as are found by the Social Security Board to comply with the conditions enumerated in Section 903. The conditions concern solely the provisions of the state laws under which the state payments are made by the taxpayers and relate only to the administration and expenditure of the funds collected; and the funds are required to be deposited in the Treasury of the United States. The conditions are in large part similar to those discussed earlier with reference to the grants-in-aid. Granted the power to tax and the power to allow credits for payments under state laws, it is difficult to find substantial constitutional ground for denying to Congress choice as to the kind of state laws that may qualify payments for the credit. This is not a purchase of compliance by individuals; the

[38] Revenue Act of 1924, §301 (b), 43 STAT. 304.

choice is not theirs and they cannot comply. Nor is this less non-coercive upon the states than the common conditions in grants-in-aid or than the estate tax upon Florida.

The further difference that most states had inheritance taxes when the 1926 Revenue Act was passed, while most states had no unemployment compensation laws when the Social Security Act was passed seems similarly insignificant. The point suggested is, of course, that because of this difference the latter act is in fact coercive though the former is not. But coercion in fact cannot be so blithely established. It is commonly believed that many states would have had unemployment compensation laws were it not for the fear of competition from states without such laws. If that is the fact, then the former states have been awaiting the opportunity made available by Title IX. On the other hand, at the time of the enactment of the Revenue Act of 1926, or thereafter, there may have been states which desired to repeal or reduce their inheritance taxes but were deterred by that Act from doing so. Moreover, in almost all the states it became profitable to increase the inheritance taxes in order to take advantage of the increased credit. If the 1926 change is regarded, rather than the initial smaller credit, the suggested difference disappears. There is no coercion in either case, as there is also no coercion in the grants-in-aid, because the same choice is provided. Congress may tax with an eye to the future as well as to the present.

If the argument thus far has carried conviction, there is no need for going farther. But there may still lurk a suspicion that we cannot "shut our eyes" to the fact that the purpose of the tax is to procure unemployment compensation and that somehow that makes a difference. The suspicion raises with respect to the Title IX tax the same issues which have already been discussed with respect to the Title VIII tax. Only little additional discussion is necessary.

Suppose that the tax were professedly levied for the establishment of a federal unemployment compensation fund to be collected, administered and expended by the federal government. Would it be within the power of Congress to lay taxes to provide for the common defense and general welfare? Are federal expenditures for unemployment relief, expenditures for a federal purpose, the general welfare? The question deserves the emphasis of Chief Justice White's favorite reply: merely to ask the question is to provide the answer. In a period of severe criticism of federal policy and federal spending almost no one is heard to say that the present unemployment is not a national problem, that the federal government should not or cannot spend its monies for the relief of unemployment. There are differences—sharp or fancied—as to methods, projects, amounts and procedures. But all seem to agree that the federal government may and must feel a responsibility and attempt to discharge it. If, then, unemployment is a national ill, its cure would be obviously for the general welfare and Congress, therefore, may appropriate money for that purpose. Whether payment of money to the unemployed will in fact tend to relieve

the ills of unemployment and thus promote the general welfare is a matter for legislative determination. But none will deny that the Congressional determination in the affirmative has abundant reasonable support.

If the payment of money to the unemployed is a proper federal expenditure, then the federal government may levy taxes in preparation for the outlay. The Act would provide for no more than the collection of taxes and the payment of benefits. Both powers are in terms granted to the federal government. No substantial issue under the Tenth Amendment would be involved. Neither the Constitution nor the spirit of federalism commands that relief for the unemployed or the aged is a matter for state concern.[39] When the distress is or threatens to be national in scope and relief is necessary for the national welfare, the matter is one for federal concern. And the federal concern is here translated into action, not through some prohibited power of regulation, but solely through the granted power to tax and appropriate.

Nor would the due process clause present any serious obstacle. Concededly, the purpose of the tax would be to foster the general welfare. General welfare not simply because of the betterment of the lot of those unemployed for the time, but general welfare because of the stimulation or maintenance of industry and commerce through the greater stabilization of purchasing power. And general welfare by the prevention of demoralization and despondency and by the stimulation of confidence and loyalty in the populace, a federal concern, as pointed out above, in peace as well as war.

If the purpose of Title IX is to provide unemployment compensation on the basis of state administration under federal supervision, it is but an alternative method for a nationally administered unemployment compensation plan. With the latter available, the choice of the former can hardly be regarded as an invasion of powers reserved to the states. With power to supplant the states, Congress has instead invited them to precede. The wisdom of the choice has been discussed elsewhere. Its consistency with the spirit of federalism seems hardly open to question. At least, so it seems to me.

[39] The use of the word "concern" is not meant as an acceptance of a particular theory as to the meaning of the Tenth Amendment. The Constitution, it has been pointed out, speaks of *powers;* and it is *powers,* not fields, subjects, or concerns, that are reserved to the states by the Tenth Amendment. See Collier, *supra* note 3, at 224. There may be much significance in the difference. But the present argument is addressed to the judicial rather than the constitutional term. *Cf.* the opinion of the Chief Justice in the *T.V.A.* case (56 Sup. Ct. at 479): "The constitutional provision is silent as to the method of disposing of property belonging to the United States. That method, of course, must be an appropriate means of disposition according to the nature of the property, it must be one adopted in the public interest as distinguished from private or personal ends, and we may assume that it must be consistent with the foundation principles of our dual system of government and must not be contrived to govern the concerns reserved to the States." The Social Security Act satisfies these requirements.

THE CASE AGAINST THE CONSTITUTIONALITY OF THE SOCIAL SECURITY ACT

Charles Denby, Jr.*

The purpose of this article is to set forth briefly and as simply as possible the reasons for believing that at least the major provisions of the Social Security Act are unconstitutional. As a background for the discussion, a brief review of the history of the legislation is necessary.

Prior to the depression of 1921, there was in this country no movement of any importance for social insurance. Workmen's compensation laws and factory laws regulating the hours of employment of women and children and the installation of safety devices were familiar, but compulsory unemployment insurance had hardly been heard of and, although there were a few private pension plans in existence, state-wide old-age pensions had just begun to be mentioned. But the war had left us with a highly developed industrial system and the problem of old-age dependency and the problems created by the shortening of the useful life of the industrial worker had already become felt as a consequence. The short depression of 1921 drew attention to these problems and to the related one of unemployment. Various states began to experiment with old-age assistance laws and there was even a feeble movement in favor of compulsory unemployment "insurance."[1] The attention of the public was, however, not drawn to these problems until after the current depression was well under way.

By 1932, twenty-one states had adopted old-age assistance laws. They were a modified form of poor relief legislation, giving benefits based upon need. All of these laws followed the same general pattern: they provided for grants to aged indigent persons, the amount of the allowance being determined in each case by the need of the individual beneficiary, but being limited in nearly all cases to $30.00 per

* A.B., 1922, Princeton; LL.B., 1925, Harvard University. Member of the Pennsylvania Bar. Chairman, Pennsylvania State Committee on Unemployment Reserves, 1933; Chairman, Committee on Unemployment Insurance Law, American Bar Association, 1934-35. Legal Secretary to Mr. Justice Holmes, 1925-26.

[1] The term "unemployment insurance" is popularly, though inaccurately, used to include both "reserve" plans, in which employers are compelled to maintain reserves available to their employees only and "pooled fund" plans, which partake of the nature of insurance, in which contributions are made into a central pool or fund, available for payment of benefits to all employees covered by the plan. Hence the neutral term, "unemployment compensation" used in the Social Security Act, and including both forms, is more satisfactory.

month. Experience with these laws was successful in many states; and although there was the inevitable opposition from die-hard employing interests, these laws were becoming recognized as a desirable form of social legislation consistent with American principles.[2]

During the first two years of the depression, agitation for so-called unemployment insurance also gained momentum. Wisconsin adopted an American version of the continental system of unemployment insurance and in 1931 enacted the first unemployment reserve law to be adopted in this country.[3] The matter was studied by legislative committees in a number of other states and by most of them the principle of unemployment insurance was approved and the enactment of legislation of this character recommended.[4] There are, however, grave doubts as to the efficacy of so-called unemployment insurance, and much respectable opinion that it is a fallacious remedy, the adoption of which will do more harm than good.[5] Under the circumstances, many felt that a system so novel and untried in America should not be hastily adopted, and should first be subjected to practical test in a few states before being adopted everywhere.

With the advent of the New Deal, however, the principle of experimentation within state boundaries and the gradual development of a national policy was superseded by that of impetuous action on a grand scale. Accordingly, the Social Security Act,[6] called one of the cornerstones of the new order, contemplates the setting up, practically at one stroke, of a social insurance program on a national scale.

I

In addition to providing comparatively unimportant grants to the states to assist them in financing their own plans for aid to the blind, to dependent children and for maternal and child welfare, and in addition to making appropriations for federal public health work, the Social Security Act contains three major features: (1) Title I, making grants to states having old-age assistance laws which comply with certain specifications; (2) Titles II and VIII, setting up a full-fledged old-age pension system, federally financed and federally administered; and (3) Title IX, imposing payroll taxes designed to force the adoption by all of the states of unemployment compensation laws meeting standards specified in the Act.

Title I appropriates sums sufficient to match sums expended by the states pursuant to approved old-age assistance plans, provided that the federal liability shall not be in excess of $15.00 per month per beneficiary. To entitle a state to the financial as-

[2] See the writer's article, *Do We Need Old Age Pensions? Yes* (1933) 170 ANNALS 93.

[3] Wis. Laws 1931 (Spec. Sess.) c. 20. The act went into effect July 1, 1934.

[4] Particularly helpful reports favoring an unemployment reserve system were prepared by the Massachusetts, Minnesota and New York Commissions. The Ohio Commission favored a pooled fund. The Pennsylvania Commission, of which the writer was Chairman, was divided; half the members opposing compulsory unemployment compensation in any form.

[5] See the writer's testimony in opposition to the Wagner-Lewis Bill. Hearings before a Subcommittee of the House Committee on Ways and Means on H. R. 7659, 73rd Cong., 2d Sess. (1934) at pp. 359-388.

[6] Act of Aug. 14, 1935, 49 STAT. 620.

sistance provided in Title I, the state plan must be compulsory in all political subdivisions of the state, must provide for financial participation by the state and either state administration or state supervision, by methods of administration satisfactory to the Social Security Board; must provide for a hearing to applicants denied assistance; must provide for making periodic reports to the Social Security Board and must provide that if, upon the death of any recipient of old-age assistance, the state shall collect anything from his estate, one-half of the amount so collected shall be paid to the United States. Furthermore, in order to be approved, the state law may not impose as a condition for eligibility for assistance an age requirement of more than 65 years, a residence requirement which excludes a person who has resided in the state for five out of nine years preceding his application and for one year immediately preceding the application, or a citizenship requirement which excludes a citizen of the United States.

Title II establishes a complete system of old-age pensions, applicable broadly to all employees in the United States, including salaried corporate officers, except those engaged in agricultural labor, domestic service, government employment and employment by charitable organizations. The system is wholly under federal administration, and the Federal Act stipulates the benefits, the method of their payment and all other matters relating to the administration of the law. Title VIII provides the funds for building up the reserve from which the benefits are to be paid. These funds are provided by employers and their employees in equal proportions, by imposing on the latter an "income tax" and, on the former, an "excise tax," fixed in both cases by a percentage of payroll.

It will be seen that the foregoing provisions furnish a complete system of relief for old-age dependency. Although Title II provides what is in effect a compulsory saving plan with respect to a group which comprises nearly two-thirds of all gainfully employed persons in the United States,[7] Title I is a necessary complement thereto, for two reasons: first, to care for needy aged persons who fall within the groups excluded from the federal pension plan; second, to care for those who are already advanced in years, and will therefore not be able to build up an adequate pension to secure them from dependency when they reach 65.

Title IX is of a different character. The principal hurdle to the enactment of state unemployment compensation laws was felt to be that of interstate competition: the argument being that a state enacting such a law was imposing upon its employers a burden which would place them at a competitive disadvantage with those of states which did not adopt such laws. The same argument had been urged against workmen's compensation laws and child labor laws. Title IX is designed to do away with this argument. It imposes an "excise tax" upon those who employ eight or more persons in employments other than approximately the same as are exempted from

[7] Data prepared under the direction of the Secretary of the Treasury at the request of Senator Jesse H. Metcalf, and submitted to the Senate Committee on Finance, indicate that approximately 25,200,000 gainfully employed persons will be subject to the tax under Title VIII in the year 1937.

the provisions of Titles II and VIII. Against this tax, however, is allowed a credit equivalent to the maximum payments such employers must make pursuant to approved state unemployment compensation laws, even though less than the applicable maximum may have become due because of favorable unemployment experience. But the total credit may not exceed 90 per cent of the federal tax. In order to be approved, a state law must comply with specifications set forth in the Act. Among these is a requirement that all monies paid into the state fund shall be paid over to the United States Treasury for investment and administration. The net effect of this section is that while employers in states which have adopted no unemployment insurance laws must pay the full tax to the Treasury, their employees can receive no benefits whatever; and that employers who have been compelled to make payments pursuant to a state unemployment law which does not meet federal specifications will have to pay the federal payroll tax nevertheless. That a tax of this sort will be most effective in inducing the desired state action can hardly be doubted.

We have, therefore, for consideration a law—or a group of laws combined into one—which (1) grants financial assistance to states in carrying out their poor relief laws, provided that these laws meet a pattern prescribed by Congress; (2) sets up a nation-wide compulsory pension system, applicable to all industrial employment; and (3) imposes taxes so designed as to exert strong pressure upon state legislatures to adopt unemployment compensation laws.

II

In approaching the consideration of the constitutionality of any federal law, the essential consideration is that the federal government is a government of delegated powers. To make certain that these powers should not be exceeded, the Tenth Amendment expressly provides that

> "All powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Accordingly, the federal government has only such powers as are expressly conferred upon it by the Constitution and such as are reasonably implied from those granted.[8] Thus, the express power to regulate interstate commerce has been held to carry with it, not only the power to regulate matters clearly interstate in character, but also the implied power to regulate matters otherwise of only local concern, if they directly affect interstate commerce.[9] So, the power to borrow money, to lay and

[8] McCullough v. Maryland, 4 Wheat. 316, 407 (U. S. 1819); Martin v. Hunter's Lessee, 1 Wheat. 304, 326 (U. S. 1816).

[9] Such matters are the regulation of intrastate railway rates to the extent that they affect interstate rates: Houston E. & W. T. R. Co. v. U. S., 234 U. S. 342 (1913); Railroad Comm. v. Chicago, B. & Q. R. Co., 257 U. S. 563 (1921); regulation of local conspiracy to obtain a corner on the interstate cotton market: U S. v. Patten, 226 U. S. 525 (1913); regulation of local trading in futures in interstate grain market: Board of Trade v. Olsen, 262 U. S. 1 (1922). So also, temporary or transitory local transactions are subject to federal regulation where they are integral parts of a broader interstate transaction, as distribution of films from interstate commerce by local distributors: Binderup v. Pathe Exchange, 263 U. S. 291 (1923); sale of cattle shipped in from without the state, from local stockyards: Swift & Co. v. U. S., 196 U. S. 375 (1905); regulation of local dealers in such cattle; Stafford v. Wallace, 258 U. S. 495 (1922).

collect taxes and to pay the public debt, involves, as a necessary and proper incident, the power to establish a national bank.[10] This, in turn, carries with it the power to authorize such banks to engage in the normal functions of a bank—most of which are, in themselves, local in character;[11] and even to confer trust powers upon national banks, in order that they shall not be at a disadvantage in competing with state-chartered competitors.[12] By a logical extension of the same principle, Congress was held to have been within its powers in the enactment of the Federal Farm Loan Act, the principal purpose of which was to permit the loaning of money upon farm lands on favorable terms, on the ground that the Federal Land Banks created under the authority of that Act were designated depositaries of public money and financial agents of the government.[13]

So long as the federal government is acting within its proper sphere, however, it is supreme. Its activities cannot be limited or interfered with by the states. Accordingly,

"When Congress acts within the limits of its Constitutional authority, it is not the province of the judicial branch of the government to question its motives."[14]

Conversely, however, the power of the states to regulate their purely internal affairs has never been surrendered to the federal government and cannot be interfered with by the latter. The maintenance of this balance is essential to the preservation of our dual system of government and is one of the safeguards of traditional American liberty.

The conflict between the foregoing principles has been one of the chief concerns of constitutional interpretation. If the only limitations upon the gradual extension of federal power were those of *logic* alone, there would soon be such an encroachment upon the reserved powers of the states that the latter would be entirely whittled away; and we would awake to find ourselves to all intents and purposes wholly under a central government and impotent in local affairs. That this danger was foreseen by the framers of the Constitution, and that they deliberately sought to guard against it, is nowhere stated more forcefully than in the following passage from an opinion of the Supreme Court in a case in which it rejected the contention that there are legislative powers affecting the nation as a whole which belong to, although they are not expressed in, the grant of powers. In reiterating that the federal government is one of enumerated powers, and that this proposition, although clear from the Constitution itself, was reasserted by the Tenth Amendment, the Court said that

"This amendment, which was seemingly adopted with prescience of just such contention as the present, disclosed the widespread fear that the National Government might, under the pressure of a supposed general welfare, attempt to exercise powers which had

[10] Osborn v. Bank of U. S., 9 Wheat. 738 (U. S. 1824).
[11] McCulloch v. Maryland, 4 Wheat. 316 (U. S. 1819).
[12] First Nat. Bank v. Fellows, 244 U. S. 416 (1917).
[13] Smith v. Kansas City Title & Tr. Co., 255 U. S. 180 (1921).
[14] *Id.* at 210.

not been granted. With equal determination the framers intended that no such assumption should ever find justification in the organic act, and that if in the future further powers seemed necessary they should be granted by the people in the manner they had provided for amending that act."[15]

The possibilities of such an extension of the federal authority were never more graphically indicated than by the principal New Deal laws, all of which were sought to be sustained as logical extensions of granted federal powers; and which, had they been sustained, would shortly have reduced the states to mere administrative districts in a central government.

The principal argument to sustain these laws was the plea that the national emergency and changed economic conditions justified a wide extension of federal power. But the limits of constitutional authority apply under all circumstances and conditions. If an act is unconstitutional, neither an emergency nor a widely-felt economic necessity can justify it.[16] That action by Congress is economically or otherwise highly desirable is immaterial in a consideration of federal power. Thus, in holding invalid the Railroad Retirement Act, an act having purposes similar to those of Title II of the Social Security Act, the Supreme Court said that

"though we should think the measure embodies a valuable social plan and be in entire sympathy with its purpose and intended results, if the provisions go beyond the boundaries of constitutional power we must so declare."[17]

Similarly, in holding invalid a tax, the purpose of which was to prevent the employment of child labor in manufacturing and mining industries, the Court said that it could not avoid this duty,

"even though it require us to refuse to give effect to legislation designed to promote the highest good."[18]

In invalidating the N. R. A. Codes by unanimous action, the Court held that neither the existence of a "national crisis" demanding "a broad and intensive coöperative effort by those engaged in trade and industry," nor the existence of a "serious economic situation" could justify federal action beyond the scope of its delegated powers.[19]

Even if it be conceded, therefore, that a national system of social insurance is highly desirable; the unemployment and old-age dependency are national problems which cannot be solved by merely local action; that the problems of investment of reserves make separate state systems impractical; and that for other cogent and imperative reasons the Social Security Act is clearly necessary and desirable, these

[15] Kansas v. Colorado, 206 U. S. 46, 90 (1907).
[16] Schechter Poultry Corp. v. U. S., 295 U. S. 495, 529, 549 (1935).
[17] Railroad Retirement Board v. Alton R. R. Co., 295 U. S. 330, 346 (1935).
[18] Bailey v. Drexel Furniture Co., 259 U. S. 20, 37 (1922).
[19] *Supra* note 15.

reasons do not justify the Act.[20] Although an Act of Congress enjoys every presumption of constitutionality,[21] nothing less than clear constitutional authority can sustain this or any other Act of Congress.

In order to sustain the various provisions of the Social Security Act, it is therefore necessary to find an express or implied grant of federal power of which each of these provisions is an exercise.

The only powers which might possibly come in question are the power to regulate commerce among the several states, the power to lay and collect taxes and excises, or the related power to use funds raised through taxation to provide for the general welfare of the United States.

It will, therefore, be necessary to examine the commerce, taxing and general welfare powers to determine whether directly or by implication they sustain the Act.

III

None of the provisions of the Social Security Act can be justified as an exercise of the commerce power. It is true that this power is one of the widest at the disposal of the federal government. As has been pointed out, it permits Congress to regulate not only interstate commerce as such, but also matters normally of merely local concern, where they have a direct effect upon interstate commerce. But when Congress sought to make what appeared to be a logical extension of the commerce power by passing a law prohibiting the transportation in interstate commerce of articles manufactured by child labor, the law was declared unconstitutional. The Court held that manufacturing and mining are not commerce and could not be directly regulated by Congress; that otherwise harmless articles of commerce do not become harmful merely because manufactured by child labor, and that Congress' power to exclude injurious articles from interstate commerce does not justify the exclusion of such goods. The essence of the decision is the holding that if the act in question could be upheld,

> "all manufacture intended for interstate shipment would be brought under federal control to the practical exclusion of the authority of the States, a result certainly not contemplated by the framers of the Constitution. . . ."[22]

The *logic* of the decision has rightly been questioned;[23] but its ultimate soundness seems clear. To have sustained the law in question would have led inevitably

[20] The Act establishes a long-term program and cannot be characterized as emergency legislation, but, even if this were attempted, its constitutional position would not be strengthened. Home Building & Loan Assn. v. Blaisdell, 290 U. S. 398 (1934); *Ex parte* Milligan, 4 Wall. 2 (U. S. 1866). In the former case the Court said (at p. 425): "Emergency does not create power. Emergency does not increase granted power or remove or diminish the restrictions imposed upon power granted or reserved. The Constitution was adopted in a period of grave emergency. Its grants of power to the Federal Government and its limitations of the power of the States were determined in the light of emergency and they are not altered by emergency. What power was thus granted and what limitations were thus imposed are questions which have always been, and always will be, the subject of close examination under our constitutional system."

[21] So also will it be construed, if fairly possible, so as to avoid the conclusion that it is unconstitutional, U. S. v. Jin Fuey Moy, 241 U. S. 394 (1916), and every reasonable construction will be resorted to to that end. Hooper v. California, 155 U. S. 648 (1895).

[22] Hammer v. Dagenhart, 247 U. S. 251, 272 (1917).

[23] See CORWIN, THE TWILIGHT OF THE SUPREME COURT (1934) 26 *et seq.*

to virtually complete surrender of state authority in matters of domestic concern; for, granted the validity of this law, there could be no *logical* limit to the extent of this indirect control over local affairs.

Finally, the Court rejected the argument that the law should be sustained as an aid to the more liberal states in maintaining their labor standards; as a protection, in other words, from interstate competition. Of this argument, the Court said,

> "In other words [the Government argues] that the unfair competition, thus engendered, may be controlled by closing the channels of interstate commerce to manufacturers in those States where the local laws do not meet what Congress deems to be the more just standard of other States.
>
> "There is no power vested in Congress to require the States to exercise their police power so as to prevent possible unfair competition. Many causes may coöperate to give one State, by reason of local laws or conditions, an economic advantage over others. The Commerce Clause was not intended to give to Congress a general authority to equalize such conditions."[24]

The decision in this case was reached by a narrowly divided court, and the extent of its authority was for some years in doubt. But since the recent decision unanimously holding the N. I. R. A. to be unconstitutional, there can no longer be any doubt that a merely limited effect upon interstate commerce cannot justify the federal regulation of local concerns. In that case, it was unanimously held that the indirect effect of hours and wages in local employment upon interstate commerce was too remote to justify federal regulation of hours and wages in local enterprise. As was stated in the opinion of the Chief Justice,

> "Interstate commerce is brought in only upon the charge that violations of [the provisions of the live poultry code]—as to hours and wages of employees and local sales—'*affected*' interstate commerce.
>
> ". . . But where the effect of intrastate transactions upon interstate commerce is merely indirect, such transactions remain within the domain of state power. If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the federal authority would embrace practically all the activities of the people and the authority of the State over its domestic concerns would exist only by sufferance of the federal government. . . .
>
> "The question of chief importance relates to the provisions of the Code as to the hours and wages of those employed in defendants' slaughterhouse markets. It is plain that these requirements are imposed in order to govern the details of defendants' management of their local business. The persons employed in slaughtering and selling in local trade are not employed in interstate commerce. Their hours and wages have no direct relation to interstate commerce."[25]

So also did the Court reject again the interstate competition argument:

> "The Government also makes the point that efforts to enact state legislation establishing high labor standards have been impeded by the belief that unless similar action is taken generally, commerce will be diverted from the States adopting such standards, and that

[24] Hammer v. Dagenhart, *supra* note 22, at 273.

[25] Schechter Poultry Corp. v. U. S., 295 U. S. 495, 546, 548 (1935).

this fear of diversion has led to demands for federal legislation on the subject of wages and hours. The apparent implication is that the federal authority under the commerce clause should be deemed to extend to the establishment of rules to govern wages and hours in intrastate trade and industry generally throughout the country, thus overriding the authority of the States to deal with domestic problems arising from labor conditions in their internal commerce.

"It is not the province of the Court to consider the economic advantages or disadvantages of such a centralized system. It is sufficient to say that the Federal Constitution does not provide for it."[26]

It is, therefore, hopeless to try to sustain the Social Security Act as an exercise of the commerce power.

IV

The taxing power of the United States is almost unlimited, except for specific limitations not here material, so long as the imposition is in fact a tax. If, however, the "tax" is a tax in form only, and really is a regulation, under the guise of a tax, of matters which the federal government has no power to regulate directly, then the tax will be held to be invalid.

Here again is the problem of limiting the *logical* extension of an admitted power, in order to preserve the authority of the states and our dual system.

How far the Court would go in declaring invalid an act which on its face imposes a tax, but which at the same time has the effect of regulating a matter beyond the scope of federal regulation, was for many years not clear. In early cases, the Court had sustained a prohibitory tax upon the circulating notes of persons and of state banks, though the act seemed clearly intended to prevent the circulation of such notes in competition with national bank notes.[27] Later, the Court sustained a prohibitory tax on oleomargarine, holding that it was within the discretion of Congress of levy excise taxes although the effect of such tax might incidentally be oppressive or even destructive.[28] Finally, the Court sustained the Harrison Narcotic Drug Act, which imposed a special tax on the manufacture, importation, sale or gift of narcotics, but the real purpose of which was obviously to regulate dealings in narcotics and to confine them to registered dealers and physicians.[29]

The principle of the foregoing cases, logically extended, would permit almost unlimited indirect regulation through the imposition of burdensome taxes. In the *Child Labor Tax Case*,[30] however, the Court put a limit to this process of extension.

After it had been held that the commerce power did not permit Congress directly to prohibit the transportation in interstate commerce of goods manufactured by child labor, Congress endeavored to accomplish the same end by an ostensible resort to the taxing power. It imposed an "excise tax" of 10 per cent of all net profits of mines, quarries, mills and other manufacturing establishments which employed children

[26] *Id.* at 549.
[27] Veazie Bank v. Fenno, 8 Wall. 533 (U. S. 1869).
[28] McCray v. U. S., 195 U. S. 27 (1904).
[29] U. S. v. Doremus, 249 U. S. 86 (1919).
[30] Bailey v. Drexel Furniture Co., 259 U. S. 20 (1922).

under the ages or for more than the hours specified in the Act. Although the Act was on its face a taxing statute, the Court held that it obviously was intended as a regulation of child labor:

"Its prohibitory and regulatory effect and purpose are palpable. All others can see and understand this. How can we properly shut our minds to it?

". . . Grant the validity of this law, and all that Congress would need to do hereafter, in seeking to take over to its control any one of the great number of subjects of public interest, jurisdiction of which the states have never parted with, and which are reserved to them by the Tenth Amendment, would be to enact a detailed measure of complete regulation of the subject and enforce it by a so-called tax upon departures from it. To give such magic to the word 'tax' would be to break down all constitutional limitation of the powers of Congress and completely wipe out the sovereignty of the States."[31]

The Court concluded that

"the so-called tax is a penalty to coerce people of a State to act as Congress wishes them to act in respect of a matter completely the business of the state government under the Federal Constitution."[32]

Similarly, the Court held that the Future Trading Act of 1921, imposing a prohibitive tax upon all contracts of sale of grain for future delivery, except only those made by farmers or farmers' coöperative associations and those made by members of a Board of Trade which had been designated by the Secretary of Agriculture as a "contract market," was not in fact a taxing act but an act designed to bring grain markets under federal regulation. In a unanimous opinion, the Court held:

" 'The act is in essence and on its face a complete regulation of boards of trade, with a penalty of 20 cents a bushel on all "futures" to coerce boards of trade and their members into compliance. When this purpose is declared in the title to the bill, and is so clear from the effect of the provisions of the bill itself, it leaves no ground upon which the provisions we have been considering can be sustained as a valid exercise of the taxing power'."[33]

In determining whether a "taxing" act is in fact a revenue measure or is really enacted for an ulterior motive, the Court will consider the true purpose of the act, as reflected in its title[34] and by a consideration of the circumstances leading to its enactment;[35] the amount of the tax relative to the value of the thing taxed;[36] whether the tax will tend to raise revenue;[37] the degree to which the tax is related to a scheme of regulation;[38] whether the regulatory features of the act, such as those requiring the keeping of records, etc., are consistent with the enforcement of a tax as such or really serve an ulterior purpose having nothing to do with the revenue features of the act;[39] and whether the revenue raised by the act is designed for the support of the government, rather than for some other purpose.[40]

[31] *Id.* at 37, 38.

[32] *Id.* at 39.

[33] Trusler v. Crooks, 269 U. S. 475, 480 (1926), quoting from Hill v. Wallace, 259 U. S. 44, 66 (1922).

[34] *Ibid.*

[35] Bailey v. Drexel Furniture Co., *supra* note 30, at 39; U. S. v. Butler, 56 Sup. Ct. 312, 316 (1936); U. S. v. Constantine, 296 U. S. 287, 294 (1935).

[36] Trusler v. Crooks, *supra* note 33.

[37] *Ibid.;* U. S. v. Butler, *supra* note 35.

[38] *Ibid.*

[39] Linder v. U. S., 268 U. S. 5 (1925).

[40] U. S. v. Butler, *supra* note 35; Head Money Cases, 112 U. S. 580 (1884).

In the light of the foregoing, and of the history and purpose of the legislation, it can hardly be seriously contended that the Social Security Act is a taxing statute. By none of the standards just mentioned can either Title VIII or Title IX be held to be a "tax." As was quite frankly stated by the Chairman of the Ways and Means Committee in reporting the bill for passage, the Act establishes a comprehensive plan of "social insurance" against " (1) unemployment; (2) old age, (3) lack of a bread-winner in families with young children."[41] Similarly, the purpose of Title IX could not be stated more clearly than in this passage from the Report of the Committee on Ways and Means:

"The failure of the States to enact unemployment insurance laws is due largely to the fact that to do so would handicap their industries in competition with the industries of other States. The States have been unwilling to place this extra financial burden upon their industries. A uniform, Nation-wide tax upon industry, thus removing this principal obstacle in the way of unemployment insurance, is necessary before the States can go ahead. Such a tax should make it possible for the States to enact this socially desirable legislation.

"This is one of the purposes of title IX of this bill."[42]

Nor does either title tend to provide revenue for the general government. Clearly is this so of Title IX, since the credit features, embodied for the purpose above stated, will deprive the government of 90 per cent of the revenue produced. As for the income taxes and excise taxes imposed by Title VIII, they are not levies "for the support of the government." Although their proceeds are paid into the general funds of the Treasury, the relationship between Titles II and VIII makes it evident that these taxes are intended as contributions into a reserve fund which is to be used to pay pensions to specific individuals, with respect to whom such contributions were made. It is a compulsory saving plan, applicable to all industrial workers. No part of the reserve fund is used for governmental purposes except to a limited extent in the administration of the Social Security Act itself.

Moreover, even if Title VIII were an exercise of the taxing power, there is grave doubt whether the "excise tax" imposed upon the employers of the beneficiary employees is a valid charge, in view of the holding in the Railroad Retirement Act decision that an analogous feature of that Act was a violation of the Fifth Amendment to the Constitution, which prohibits the taking of property without due process of law. The Court held that the Act was unconstitutional on that ground, since the property of certain carriers would be taken to build up a fund used largely for the benefit of the employees of other carriers. The Court held that

"There is no warrant for taking the property or money of one and transferring it to another without compensation, whether the object of the transfer be to build up the equipment of the transferee or to pension its employees."[43]

[41] 79 CONG. REC. 5468 (1935).

[42] H. R. Rep. No. 615, 74th Cong., 1st Sess. (1935) p. 8.

[43] Railroad Retirement Board v. Alton R. R. Co., 295 U. S. 330, 357 (1935). The Railroad Retirement Act, it is true, required a "contribution" for pension purposes from the employer railroads, but it is

The argument applies with equal force to the compulsory taking of property from employers to create a pension fund for their employees. And, as said by the Court in the *A. A. A.* decision with respect to processing taxes levied upon processors, the proceeds of which were to be paid to certain producers of agricultural products,

> "A tax, in the general understanding of the term, and as used in the Constitution, signifies an exaction for the support of the Government. The word has never been thought to connote the expropriation of money from one group for the benefit of another. We may concede that the latter sort of imposition is constitutional when imposed to effectuate regulation of a matter in which both groups are interested and in respect of which there is a power of legislative regulation. But manifestly no justification for it can be found unless as an integral part of such regulation."[44]

As for Title IX, its obvious and admitted purpose is to equalize competitive conditions between states, insofar as a charge for unemployment compensation is concerned. That the imposition of a burden for such a purpose cannot be allowed, appears from the cases above cited.[45]

It seems clear, therefore, that the Social Security Act cannot be sustained as a taxing measure.

V

The remaining constitutional authority upon which the provisions of the Social Security Act may be sought to be rested is the so-called "welfare clause." This famous clause[46] provides that

> "The Congress shall have power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts *and provide for the common Defence and general Welfare of the United States. . . .*"

From the beginning of the government, there has been protracted debate as to the true meaning and scope of this clause; authorities being divided as to whether the view of Madison or that of Hamilton, was correct.[47] The former asserted that the latter part of the clause conferred no independent power, but related to the specific powers enumerated in the subsequent clauses of the same section; whereas Hamilton maintained that the clause conferred a separate and distinct power to appropriate revenues raised through taxation for the general welfare of the United States, and not merely in order to carry out the powers elsewhere expressly enumerated. The controversy appears finally to have been authoritatively resolved by the Supreme Court in the *A. A. A.* decision, in which the Court interprets the welfare clause as though it read

---

submitted that, from a constitutional standpoint, the fact that this levy was not designated as a tax is inconsequential.

[44] U. S. v. Butler, 56 Sup. Ct. 312, 317 (1936).

[45] *Supra* notes 24, 26.

[46] U. S. CONST. ART. I, §8.

[47] For an able summary of the historical background, see Corwin, *The Spending Power of Congress* (1923) 36 HARV. L. REV. 548.

"The Congress shall have power to lay and collect taxes, duties, imposts and excises, *in order to provide funds with which* to pay the debts and to provide for the common defense and general welfare of the United States."

and holds that the clause grants an independent substantive power. As said by the Court,

"It results that the power of Congress to authorize expenditure of public monies for public purposes is not limited by the direct grants of legislative power found in the Constitution."[48]

In other words, the power of Congress to appropriate monies for the general welfare is a power of equal dignity and scope with the power to tax, the power to regulate commerce or any other of the granted powers. The limits of this power are not yet clear, however, and it has been little tested in the courts. It is beyond question, however, that the power is merely one to *appropriate money* in the interest of the general welfare. It does not justify general legislation in the interest of the general welfare. Such an interpretation was expressly rejected by the framers of the Constitution,[49] and cannot be justified upon any reasonable ground. Not merely would such an interpretation do extreme violence to the context in which the clause is set, but it would make all the other provisions of the Constitution superfluous, and destroy the whole foundation of the dual system which it was the clear intention of the Constitution to establish.

Any lingering doubt on this question has been disposed of by the opinion of the Court in the *A. A. A.* case. Expressly reserving the question whether an appropriation in aid of agriculture falls within the welfare clause, the Court holds that no such appropriation is valid if it is in real effect a *regulation* of agriculture.

So long as there is no question of ulterior result or motive, the power is without limit, except that the expenditure must be for the general welfare of the whole country. Thus, it has been held to justify appropriations to construct a national memorial park;[50] and it seems clearly to justify appropriations which for years have been made to aid public education in the states and to establish and maintain the Bureau of Fisheries, the Bureau of Mines, the Department of Agriculture, and numerous similar activities, as well as to relieve the unemployed and the sufferers from drought, flood and other catastrophes. But the power conferred by the welfare clause necessarily has limitations similar to those imposed upon the powers to tax and to regulate commerce. Just as those powers may not be employed to serve an ulterior end which cannot be reached by the direct action of Congress, just as they cannot by "logical" extension be expanded into the sphere reserved to the states, so the power to appropriate monies for the general welfare of the United States cannot be used to serve an ulterior end which could not be directly attained.

[48] U. S. v. Butler, 56 Sup. Ct. 312, 319 (1936).
[49] See STORY, COMMENTARIES ON THE CONSTITUTION (1833) §908.
[50] U. S. v. Gettysburg Ry. Co., 160 U. S. 668, 681 (1896).

It would seem that this is the necessary consequence of the decision in the *A. A. A.* case. In form, that case involved the validity of processing taxes. In substance, however, the decision rests on the fact that these taxes were imposed to provide the revenue which in turn was to be used for the regulation of agriculture and the creation of a scarcity of agricultural products in order to raise the price level. The Supreme Court struck down the tax as part of this regulatory scheme. In itself, however, the tax was valid. It was invalid only because of *the use to which the proceeds of the tax* were to be put. In other words, not only is a tax invalid which, by imposing a penalty, directly results in regulation; but one is equally invalid which, though otherwise valid, is designed to provide money which is to be *spent* to attain an end which cannot be directly reached.

The *A. A. A.* decision went even further than this. It held that where Congress cannot directly regulate conduct and cannot regulate it indirectly through the imposition of a penalty, it cannot even appropriate public monies to *purchase* compliance with rules and regulations, obedience to which it could not *enforce*. As said by the Court,

> "There is an obvious difference between a statute stating the conditions upon which monies shall be expended and one effective only upon assumption of a contractual obligation to submit to a regulation which otherwise could not be enforced. . . .
>
> "Congress has no power to enforce its commands on the farmer to the ends sought by the Agricultural Adjustment Act. It must follow that it may not indirectly accomplish those ends by taxing and spending to purchase compliance."[51]

Although strictly the *A. A. A.* case was decided as one involving the taxing power, the case is really one which for the first time foreshadows the limitations which will be placed upon the spending power. Though this is clear from the position of the majority, it is made abundantly so in the dissenting opinion written by Mr. Justice Stone and concurred in by Justices Brandeis and Cardozo. Justice Stone's dissent states at the outset that

> "The present levy is held invalid, not for any want of power in Congress to lay such a tax to defray public expenditures, including those for the general welfare, but because the use to which its proceeds are put it disapproved."[52]

He proceeds to state that though the majority does not hold that the welfare clause does not justify aid to farmers, it does disapprove of aid which is given as "a step in a plan to regulate agricultural production." He concludes that such a limitation upon the spending power must virtually destroy it, and will certainly lead to "absurd consequences":

> "The government may give seeds to farmers, but may not condition the gift upon their being planted in places where they are most needed or even planted at all. The government may give money to the unemployed, but may not ask that those who get it shall give labor in return, or even use it to support their families. It may give money to sufferers

[51] U. S. v. Butler, 56 Sup. Ct. 312, 316, 317 (1936).
[52] *Id.* at 325.

from earthquake, fire, tornado, pestilence or flood, but may not impose conditions—health precautions designed to prevent the spread of disease, or induce the movement of population to safer or more sanitary areas. All that, because it is purchased regulation infringing state powers, must be left for the states, who are unable or unwilling to supply the necessary relief. The government may spend its money for vocational rehabilitation, 48 Stat. 389, but it may not, with the consent of all concerned, supervise the process which it undertakes to aid. It may spend its money for the suppression of the boll weevil, but may not compensate the farmers for suspending the growth of cotton in the infected areas. It may aid state reforestation and forest fire prevention agencies, 43 Stat. 653, but may not be permitted to supervise their conduct. It may support rural schools, 39 Stat. 929, 45 Stat. 1151, 48 Stat. 792, but may not condition its grant by the requirement that certain standards be maintained."[53]

Whether the proposition upon which the majority decision is rested is "absurd" or not is obviously a question of the degree to which it is to be extended. It is not difficult to state extreme hypothetical cases which will make any proposition seem absurd. What we are dealing with, however, is but another example of the great question at what point the purely logical extension of federal power must be limited by its infringement upon the fundamental proposition that our government is one of dual sovereignty. Ultimately, this point must be determined on the basis of the common sense, or of the social and political theories—or perhaps of the state of the digestion—of the Justices. In determining this point with respect to the commerce power, the taxing power, or any of the other federal powers, the same considerations come into play. In holding that most of the New Deal laws which have thus far come before the Court exceeded any admissible extension of federal power, it seems fairly clear that the Court was strongly influenced by the very magnitude and scope of the extension of federal power sought to be made by legislation enacted since 1932.

In the light of what has been said, it is difficult to see how Titles II and VIII of the Social Security Act can stand as an exercise of the welfare power. That they must be read together is clear; and, read together, it is equally clear that they go far beyond an *appropriation*. They set up an elaborate system for compulsory saving. They regulate the relations between employers and employees in local industries, in mining, in clerical employments. They establish conditions of employment. None of these things can be reached directly by federal action; all are matters of state concern.

Title IX does not even purport to be an appropriation, and can therefore claim no support from the welfare clause.

Title I (and the similar Titles III, IV, V and X, making grants to the states for the administration of state unemployment compensation plans, for aid to dependent children, for maternal and child welfare and for aid to the blind) presents a more difficult question. Undoubtedly the objects of all these grants are well within the

[53] *Id.* at 328.

"public welfare" clause and undoubtedly mere appropriations for such purposes would be valid.

The only question is whether the restrictions placed upon the grants in Title I (and the other similar titles) partake sufficiently either of a regulation of state affairs or of an attempt to coerce the states into action, to be an invalid exercise of federal power. Thus, the requirement of Title I, that, in order to justify federal grants, a state plan of old-age assistance must provide for financial participation by the state; that the administration of the state law must be satisfactory, so as to insure minimum costs of administration; that, of the amounts collected from the estates of deceased beneficiaries, one-half must be remitted to the United States, are reasonable conditions of a grant of federal aid. This is not quite so clear, however, of the requirement that the state law must be compulsory in all the political subdivisions of the state. In many, there is at present scope for local option. Why must this be given up? Nor is it quite so clear of the residence requirement imposed by Title I.

Whether any of the foregoing requirements are reasonable conditions, or whether they go beyond that, and are an attempt to control state policy on matters of state concern, is the question which must determine the validity of Title I. The question is obviously one of emphasis, of degree. The considerations influencing the decision are similar to those which determine whether the regulations contained in what purports to be a taxing act are, in fact, regulations reasonably related to the collection of the tax, or whether they go beyond that and contemplate the regulation of a matter over which Congress has no jurisdiction.[54]

That the provisions of these titles will result in tremendous pressure upon state legislatures to adopt old-age assistance and other welfare legislation or to modify existing laws, if necessary, cannot be doubted. Local taxes are too hard to raise to permit legislatures to resist the temptation to obtain donations from the central government. Most states will receive more than their citizens will pay in federal taxes and that will be a sufficient argument; and the pressure will be equally heavy upon the few states which will receive less—for to comply with the federal wish and receive something is cheaper than to remain aloof and yet contribute to other states. That the power to exercise such pressure upon the states in matters in which the federal government can admittedly not directly compel action is inimical to the dual system of government embedded in the Constitution seems clear. Its exercise, even with the best of motives, is on the borderline of constitutionality. On the whole, Title I and the other similar titles, are probably valid. Perhaps it would be more accurate to say that Title I is, strictly, unconstitutional; but that it is within the tolerance permitted.

Whether the constitutionality of these titles will ever be tested is another question. Thus far, it has not been possible to bring a similar question before the Court. In a case in which the State of Massachusetts and an individual taxpayer sought to restrain the carrying out of the Maternity Act,[55] a law very similar in intention and in detail to Title I of the Social Security Act, upon the ground that it was unconstitu-

[54] See Linder v. U. S., 268 U. S. 5 (1925).

[55] 42 STAT. 224 (1921).

tional, the Court expressly declined to pass on the constitutional question involved, holding that the Court was without jurisdiction to entertain a suit raising this question, whether it be brought by a state or by an individual taxpayer. With respect to the suit brought by the state, the Court held that

> "Probably it would be sufficient to point out that the powers of the State are not invaded, since the statute imposes no obligation, but simply extends an option which the State is free to accept or reject. . . .
>
> ". . . If Congress enacted [the statute] with the ulterior purpose of tempting [the States] to yield, that purpose may be effectually frustrated by the simple expedient of not yielding."[56]

In view of this, the Court held that there was no "controversy" over which the Court could take jurisdiction.

As to the suit brought by the individual taxpayer, the Court also held that it could not entertain jurisdiction, on the ground that the interest of the individual taxpayer

> "is shared with millions of others; is comparatively minute and indeterminable; and the effect upon future taxation, of any payment out of the funds, so remote, fluctuating and uncertain, that no basis is afforded for an appeal to the preventive powers of a court of equity."[57]

In addition, the Court stated that the matter was of "public, and not individual, concern" and that suit by individual taxpayers would result in great inconvenience.

The foregoing case was decided by a unanimous Court; and it may be assumed that the Court will come to the same conclusion with respect to any appropriation which, on the one hand, clearly falls within the welfare clause, and which, on the other hand, does not clearly seek indirectly to regulate matters of local concern. On principle, however, the decision of the Court in that case, to the effect that an individual taxpayer has no standing to enjoin an appropriation of Congress, is of extremely doubtful soundness; and, especially after the decision of the Court in the *A. A. A.* case, in which the Court held that Congress cannot exert economic pressure upon an individual to induce him to act as it desires him to act, the Court may not follow its previous decision if there should be presented for consideration a situation in which the appropriating act clearly goes beyond an appropriation upon reasonable conditions, and seeks to coerce or to "purchase" compliance by the states with federal wishes.

To summarize: all of the provisions of the Social Security Act with respect to unemployment insurance and to compulsory federal old-age pensions are void, since they are not an exercise of any federal power and are an invasion of matters reserved to the states; the grants-in-aid are probably constitutional, but their validity will even more probably never be tested.

[56] Massachusetts v. Mellon, 262 U. S. 447, 480, 482 (1923).
[57] Frothingham v. Mellon, *id.* at 487.

INDEX

THE OLD-AGE SECURITY AND THE WELFARE TITLES OF THE SOCIAL SECURITY ACT*

* As used in this index, the abbreviations "o/a" and "S. S. Act" refer to old-age and to the Social Security Act respectively.